

The University of Chicago

THE SETTLEMENT OF
INTERNATIONAL CONTROVERSIES

A PART OF A DISSERTATION SUBMITTED TO
THE FACULTY OF THE DIVISION OF THE
SOCIAL SCIENCES IN CANDIDACY FOR THE
DEGREE OF DOCTOR OF PHILOSOPHY

DEPARTMENT OF POLITICAL SCIENCE

1931

By
LAWRENCE VAUGHAN HOWARD

Private Edition, Distributed by
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CHAPTER I

GENERAL SCOPE AND PURPOSE OF THIS STUDY

It is the purpose of this study to inquire into the procedure which the United States has employed in the settlement of international controversies to which it has been a party. The plan adopted for the study of this question is as follows: two fifteen-year periods were selected and a careful tabulation made of all the disputes to which the United States was a party during both periods about which there is any published record. The periods thus selected were 1866-1880 and 1900-1914, and the sources mainly relied upon were "Papers Relating to the Foreign Relations of the United States", published annually by the Department of State. It was assumed that all the disputes about which there was any mention in "Foreign Relations" during these years would constitute a sufficient sample of all the disputes to which the United States has been a party to warrant the drawing of fairly accurate conclusions with regard to disputes in general.

The periods 1866-1880 and 1900-1914 were chosen for three reasons. The first is the ready availability of the diplomatic correspondence for these years. In 1861

the Government began the practice of issuing each year with the annual message of the President one or more volumes of the "Diplomatic Correspondence of the United States." In 1870 the title of the series was changed to "Foreign Relations". These volumes have been published annually down to 1918, the volume for the latter year having just appeared. As yet no correspondence for the years 1919-1930 has been published, nor is it open to research workers. In fact the archives of the Department of State are not open for the examination of unpublished material after 1906.

The second reason for the choice of the periods 1866-1880 and 1900-1914 is that in neither period were the diplomatic relations of the United States disturbed by war. The American Civil War had just closed in 1866 and the World War was just beginning in 1914. Since neither period includes the Spanish War, we are able to view the work of the Department of State during years of peace and normalcy and consequently to study the methods of settling international controversies under such conditions.

The third reason for the choice of the years 1866-1880 and 1900-1914 is that they are sufficiently far apart to furnish a basis for comparative study. Has the amount of diplomatic correspondence increased or decreased in the later period? What changes have there been in the number, character and methods of settlement of international

controversies? These and other questions of a similar nature we should be able to answer by comparing the controversies occurring between 1866-1880 with those occurring between 1900-1914.

In order to check, at least partially, the accuracy of conclusions based wholly on the published correspondence in "Foreign Relations", the unpublished correspondence for selected years was also examined. Through the courtesy of the Division of Publications and of the Archives Section of the Department of State, the author was permitted to examine the unpublished documents for the years preceding 1906. In view of the immense amount of this material it was quite impossible to explore it all. Consequently, three years, 1866, 1880, and 1905, were selected. The correspondence for these years, and in fact for any year, is filed by countries in numbered volumes under the captions "Notes to the Department", "Notes from the Department", "Dispatches", and "Instructions". Notes to and from the Department comprise the correspondence between the Department and the foreign ambassadors, ministers, etc., in Washington. Dispatches and instructions comprise the correspondence between the Department and American diplomatic representatives abroad. In order to conserve time in dealing with the large amount of material found in these years, a careful study was made only of

the "Notes to the Department" and of the "Dispatches" for the years 1866, 1880, and 1905. "Notes from the Department" and "Instructions" for these years were somewhat hastily examined in order to get some idea of their number and general contents but not for the purpose of cataloguing the disputes which were mentioned in them. For a complete record of the disputes to which the United States was a party during these years sole reliance was placed upon "Notes to the Department" and "Dispatches". For that reason the list of disputes omitted from the published correspondence of 1866, 1880, and 1905 in Appendix III does not record the methods of settlement, even though the dispute might have been settled within the year. In other words, the unpublished correspondence for 1866, 1880 and 1905 was examined for the purpose of finding out the number and character of the disputes about which there is no mention in "Foreign Relations" and not for the purpose of studying the methods by which such disputes were settled in comparison with the methods employed in the case of those disputes which are recorded in the published correspondence. Such a comparison would involve the examination of the unpublished material for a number of years, for controversies are not always settled within the space of a calendar year.

A further purpose in studying the unpublished correspondence for selected years was to compare its general

contents with the contents of "Foreign Relations". In order to do this it was necessary to take into consideration not only the published and unpublished controversial material but also the remainder of the correspondence which passes annually between the Department of State and both American representatives abroad and foreign representatives in Washington. In this way some light may be thrown upon the principles by which some material is selected for publication and other material remains unpublished.

The disputes to which the United States was a party between 1866 and 1880 and between 1900 and 1914 are both numerous and varied. Detailed discussion of each was quite impossible and so the practice was adopted of recording each dispute briefly in accordance with a standardized form. The record of each dispute includes the following items of information concerning it: (1) parties involved, (2) subject matter of the dispute, (3) character of the action taken by the plaintiff state, (4) issue, (5) settlement, (6) method of settlement, and (7) approximate duration. On account of the incompleteness of "Foreign Relations" information on all of these points could not be secured in many cases. In such instances resort was had to other sources. For the most part, however, sole reliance had to be placed on "Foreign Relations" because in no other place could any mention be found of the

great majority of minor controversies. If the record of any dispute is incomplete, it is due therefore to the incompleteness of "Foreign Relations" and to an inability to find any mention of the dispute elsewhere.

The conclusions to be drawn from the data thus collected fall into three classes: first, conclusions based upon a comparison of the periods 1866-1880 and 1900-1914; second, conclusions regarding disputes in general, and, third, conclusions regarding the publicity of diplomatic correspondence on controversial matters. A comparison of the periods 1866-1880 and 1900-1914 should reveal any differences in the number, character and methods of settlement of international controversies during these years. Upon the basis of the information collected regarding the disputes of both periods it should be possible to answer such questions as the following: What are the most frequent causes of international friction? What is the character of the action most often taken by the plaintiff state and does it vary with the type of dispute and the countries involved? How are international controversies settled and how long does it require to effect a settlement? What relation is there between the type of dispute, the country involved and the method of settlement? Finally, by comparison of the published with the unpublished material, some light

may be thrown upon the policy of the Department of State in regard to the publication of diplomatic correspondence on matters of both a controversial and a non-controversial character. It is to an examination of the unpublished material that we first turn our attention.

CHAPTER II

THE PUBLISHED IN RELATION TO THE UNPUBLISHED CORRESPONDENCE

As noted at the outset, it was assumed that all the disputes which were mentioned in "Foreign Relations" during the years 1866-1880 and 1900-1914 would constitute a sufficient sample of all the disputes to which the United States had been a party to warrant the drawing of fairly accurate conclusions with regard to disputes in general. In order to check the accurateness of this assumption, however, the unpublished correspondence for the years 1866, 1880 and 1905 was examined and the disputes which were not recorded in "Foreign Relations" were tabulated. These disputes are recorded in Appendix III and summarized in tabular form in Table IX. It is the purpose of the present chapter to discuss the general publication policy of the Department of State, especially as regards the publication of material of a controversial character. Before undertaking to do this, however, let us survey very briefly the contents of "Foreign Relations".

"Foreign Relations" is composed mainly of the diplomatic correspondence of the United States; that is, of notes exchanged between the Department of State and the foreign

representatives in Washington, of instructions sent by the Department to its diplomatic representatives abroad and of dispatches from these representatives to the Department. This correspondence is of course all official, no communications from private individuals being included except as inclosures to notes, dispatches or instructions. This material is arranged topically and chronologically by countries in such a manner as to make it readily accessible for use. Furthermore, each paper which is published is listed separately with a brief synopsis of its contents.

This correspondence, it may well be imagined, concerns a variety of topics. The dispatches particularly deal with matters of a very wide and diverse character. The American diplomat abroad is supposed to see and hear everything and to report it all to the Department. A few of the most common topics upon which dispatches are found may well be mentioned. Accounts of public celebrations, proposed tours of prominent government officials, deaths of sovereigns and other high government officers, pending and adopted legislation, court decisions, speeches of the executive, elections, revolutions and general internal social, economic and political conditions are all treated in dispatches to the Department of State. Besides these matters which relate primarily to the internal administration of a foreign government, there are

reports of controversies with third states, treaties and conventions and general foreign policy. These are only a few of the topics which are most often treated of in dispatches to the Department. The American diplomat, as said above, is supposed to report what is going on about him and the extent to which he does this depends upon his ability to see and interpret and his aptitude for writing. It is not surprising then that we should find the American minister to Ecuador elaborating upon the virtues of cundurango wood as a remedy for cancerous and venereal disease,¹ or the American minister to Italy writing of the discovery of the arms of the Venus de Milo,² or the American minister to Belgium reporting that during 1878 there were 206 rainy days in Brussels, 34 showery with thunder, 44 foggy, 33 very cloudy, 17 with hail, 19 with snow, 17 with severe frost and 2 fair.³

Scarcely less diverse in character are the instructions issued by the Department of State, sometimes as circulars dealing with some matter of general interest, such as the application of the American immigration or tariff laws, but more often in the form of advice relating to a specific action, situation or policy. Thus the American diplomat receives a constant stream of advice and instructions which

1. Foreign Relations, 1871-72, pp. 255-56.

2. Ibid., 1877, p. 289.

3. Ibid., 1880, p. 66.

guide and control his actions in the conduct of his office.

Besides the correspondence between the Department at Washington and its diplomatic agents abroad, "Foreign Relations" also includes notes exchanged between the Department of State and the diplomatic representatives of other countries stationed in Washington. This correspondence too concerns a variety of matters bearing upon the international relations of the countries in question. In addition to the above, "Foreign Relations" also contains many of the treaties and agreements of the United States, the proceedings of international conferences and arbitrations, the annual message of the President and other papers relating to the foreign affairs of the United States. In short, "Foreign Relations" is meant to be a documentary history of the foreign relations of the United States, published annually as soon as practicable after the close of each year.

"Foreign Relations" does not, however, purport to be a complete record of American diplomatic dealings, as any one who has had occasion to use these volumes has discovered. They are incomplete in at least two respects; first, because of the entire absence of material on many topics which one would expect to find mentioned there, and, second, because of the omission of much material dealing with topics that are mentioned. These omissions result for the most part from the

practical impossibility of publishing all of the diplomatic correspondence and from the necessity of keeping much of it secret, especially that which was regarded as confidential at the time that it was written.

The extent to which the diplomatic correspondence is published in "Foreign Relations" cannot be exactly ascertained. However, it can be approximated to a fair degree from the tables given below. As noted in a preceding chapter, the author was permitted to examine the unpublished correspondence for the years preceding 1906. This he did for the years 1866, 1880 and 1905, with a view principally to determining the number and character of the international controversies about which there was no published record. However, in running through the indexes to the correspondence for these years, it was possible to ascertain without much difficulty the total number of dispatches, instructions and notes for certain countries during the selected years. The tables below give the results of this tabulation for eight countries,¹ together with the number of notes, dispatches and

1. The countries selected—Great Britain, France, Italy, Spain, Denmark, Netherlands, Peru and Venezuela—are not altogether representative from a geographical point of view. However, they are representative of both European and American states and they include nations with which our diplomatic relations have been both important and unimportant. Other countries were not chosen for different reasons. Diplomatic relations had not been established with some of them in 1866, some of the correspondence with the others was not at the time of the investigation available for use, etc.

1866

	Notes to Depart- ment		Notes from Depart- ment		Dis- patch- es		In- struc- tions		Totals	
	To- tal	Pub- li- shed	To- tal	Pub- li- shed	To- tal	Pub- li- shed	To- tal	Pub- li- shed		
France	84	6	119	9	164	47	212	26	579	88
Great Brit- ain	314	32	401	40	175	88	257	66	1147	226
Den- mark	45	0	38	0	41	18	24	3	148	21
Spain	75	30	75	10	59	13	37	5	246	58
Peru	29	10	25	7	41	18	33	11	128	46
Italy	27	0	30	0	41	18	21	2	119	20
Venezu- ela	17	0	13	0	36	11	20	3	86	14
Nether- lands	29	0	28	0	12	3	14	0	83	3
Total	620	78	729	66	569	216	618	116	1536	476

1880

	Notes to Depart- ment		Notes from Depart- ment		Dis- patch- es		In- struc- tions		Totals	
	To- tal	Pub- li- shed	To- tal	Pub- li- shed	To- tal	Pub- li- shed	To- tal	Pub- li- shed		
France	74	9	77	8	130	11	107	6	388	34
Great Brit- ain	239	18	255	17	179	15	140	5	813	55
Den- mark	18	0	17	0	49	2	31	0	115	2
Spain	64	2	63	2	136	10	105	6	368	20
Peru	26	2	0	0	125	10	60	4	211	16
Italy	60	0	55	0	69	3	57	1	241	4
Venezu- ela	48	0	18	0	118	9	39	3	223	12
Nether- lands	45	3	41	1	31	3	34	0	151	7
Total	574	34	526	28	837	63	573	25	2510	150

1905

	Notes to Depart- ment		Notes from Depart- ment		Dis- patch- es		In- struc- tions		Totals	
	To- tal	Pub- li- shed	To- tal	Pub- li- shed	To- tal	Pub- li- shed	To- tal	Pub- li- shed		
France	103	3	115	1	126	0	130	1	477	5
Great Brit- ain	250	14	214	12	203	8	205	0	872	34
Den- mark	68	0	56	0	73	7	21	1	218	8
Spain	68	3	47	1	92	5	52	1	259	10
Peru	36	0	21	0	192	3	30	2	280	5
Italy	128	7	97	5	128	4	73	6	426	22
Venezu- ela	12	1	10	0	133	20	55	8	210	29
Nether- lands	52	0	33	0	145	3	41	0	271	3
Total	720	28	593	19	1092	50	607	19	3013	116
Total 1866	620	78	729	66	569	216	618	118	2536	476
Total 1880	574	34	526	28	837	63	573	25	2510	150
GRAND TOTAL	1914	140	1848	113	2498	329	1798	160	8059	742

instructions for those countries which were published in "Foreign Relations".

These tables show that only a very small percent age of the diplomatic correspondence is published in "Foreign Relations", in fact less than 10 per cent for the countries selected during the years 1866, 1880 and 1905. However, about 19 per cent was published in 1866, but only 6 per cent in 1880 and less than 4 per cent in 1905. These figures show that the ratio of published to unpublished material has considerably decreased within recent years, that is, that much less is published today than at the time of the Civil War. In 1866 there were three volumes of "Foreign Relations" published, totaling about 2000 pages, while there was only one volume published in 1880 and one in 1905, each comprising about 1000 pages. Secretary of State Seward seems to have published much more of the diplomatic correspondence than his successors, for the amount of published material since 1868 has perceptibly decreased. This decrease is much more significant when it is considered that the amount of correspondence and the number of countries in the world has steadily increased. The amount of published material has therefore not kept pace with the growth of international relations, in fact the former has decreased while the growth of the latter has been very marked.

The tables above show further that there are relatively fewer notes published than dispatches and instructions. Correspondence between the Department of State and the foreign diplomats in Washington is not published very freely, especially within more recent years. The reasons for this will be taken up later in discussing the types of omitted material. Furthermore, dispatches are published more freely than instructions, the former being the largest class of correspondence that is found in "Foreign Relations".

So far no account has been taken of the fact that much of the correspondence between the Department of State and its representatives abroad is by cable. The figures of the tables above do not include telegrams of which there have come to be an increasing number within recent years. In 1866 there were few cable messages, but by 1880 the number had grown considerably and by 1905 there were in some cases almost as many cablegrams as there were dispatches and instructions. Nowadays everything of any importance at all is transmitted by cable with a dispatch or instructions sent to confirm the cable message and to elaborate, if necessary, upon it. Generally speaking, relatively more telegrams are printed in "Foreign Relations" than mail correspondence. The reason for not including them in the figures of the tables above is

that they are not numbered serially as are dispatches and instructions and because, as just noted, they are always confirmed by letter. Needless to say, very few of the communications between the Department of State and the foreign representatives in Washington are by telegraph.

The facts just stated do not alter very materially our conclusions regarding the relatively small amount of diplomatic correspondence that is published. Taking it all together, hardly more than 4 per cent was published in 1905, which means that for every note, dispatch or instructions printed in "Foreign Relations" there were 24 which went unpublished. This unpublished material is filed away and, as noted in a former chapter, is not even available for use by research workers after 1906.

What is the character of the correspondence which is omitted from "Foreign Relations" and why is it omitted? It is to this question that we now turn our attention. The unpublished correspondence falls into three general classes. In the first place, practically all of the correspondence relating to purely routine matters is omitted. In this class come notes requesting the confirmation of consular exequaturs and the admission of goods free of duty. These two items alone comprise a large amount of correspondence between the Department and the foreign diplomats in Washington. Whenever a consul is appointed by a foreign government to a post in the

United States, his exequatur must be confirmed by the Department of State. The request for confirmation is made by the ambassador or minister representing the country making the appointment, and of course such request must be answered by the Department. Goods shipped to a foreign diplomat in Washington are entitled to admission to the United States free of duty but request for free entry must be made in each case. Notes have therefore to be exchanged on the subject between the Department and the diplomat to whom the goods are shipped.

In the same class of unpublished material are dispatches requesting leaves of absence and simple acknowledgments of instructions, dispatches and notes. Every time an American diplomat leaves his post, he must have the permission of the Department of States, which means that letters have to be exchanged on the subject. Many of the dispatches, instructions and notes cannot be answered immediately for lack of information, but in most such cases their receipt must be acknowledged immediately. Such acknowledgments are quite often not published in "Foreign Relations".

The publication of this class of material may well be disallowed. It is all of a routine character and is of little or no interest to any one. Its publication would be an expense to the Government which would be totally unnecessary, and so it is omitted because of its unimportant character and in order to cut down the size and cost of "Foreign

Relations".

The second class of material omitted from "Foreign Relations" is that which it would be politically inexpedient or unwise to publish. Examples of this type of correspondence are numerous. Dispatches which embody the personal opinions of American diplomats regarding some matter under discussion or some government official of a foreign country are many times omitted because their publication at an early date would make the diplomat persona non grata to the government which receives him. The publication of such material would not only react against the writer but would tend in many cases to embarrass diplomatic negotiations between the two countries and to offend the government or state about which the opinion was expressed.

Likewise, some material is not published because publication would violate the confidence reposed in the Department by other governments or by individuals. It is also unwise to make public disputes which occur between members of the American foreign service stationed at the same post or at different posts. For example, there could be no value in publishing information regarding a personal dispute between two American ministers abroad or between a minister and one of his staff. The publication of such matters as the above would be politically inexpedient and unwise, and so they are best left unpublished.

The third class of material omitted from "Foreign Relations" is apparently omitted for no good reason at all. It is simply left out because of the lack of a definite policy regarding the publication of official correspondence or because of a failure to execute or administer properly the adopted policy. Reference to Tables 7 and 8 reveals the fact that there were 61 controversies during both of the periods included within this study in which no settlement was recorded in "Foreign Relations". Many of these controversies were doubtless never brought to a conclusion because of a failure to prosecute them after the original complaint had been made, but, on the other hand, many of them were settled but the settlement was not recorded in "Foreign Relations". For example, in the controversies with Italy, 1899-1903, regarding the lynching of Italian subjects in Louisiana and Mississippi, a full account is given in "Foreign Relations" with the exception of the settlement which was reached. The unpublished correspondence reveals the fact that a total of \$9000. was paid by the United States to the Italian Government as an indemnity for the lynchings. Likewise, in the dispute with Cuba, 1904-1905, growing out of the inadequate punishment inflicted on a Cuban officer who had arrested an American citizen and confined him in jail with a demented negro by whom he was murdered, "Foreign Relations" does not record

what the Cuban Government did to satisfy the complaint. The unpublished correspondence, however, records the settlement which was reached in the case. In instances like the above, and in dozens of others, there is apparently no good reason why parts of the correspondence should be published and other parts left unpublished.

There is also a large amount of unpublished correspondence relating to topics which are not mentioned at all in "Foreign Relations", for which no good reason for non-publication can be assigned. Included in this class of material are most of the international controversies which are outlined in Appendix III and summarized in Table IX. The latter table shows that there were 249 controversies during the years 1866, 1880, and 1905, or an average of 83 per year, about which there was no published record. During the same years there were only 109 controversies mentioned in "Foreign Relations", or an average of 36 per year. In other words, the unpublished correspondence contained over twice as many disputes as the published correspondence for those years. An examination of these disputes shows that they are of much the same character as those which are found in "Foreign Relations" and certainly of no more importance. There is apparently no good reason why they should not have been published except that their publication would have materially increased the size and cost of

"Foreign Relations".

By way of conclusion we may say that the failure to publish much of the diplomatic correspondence is due to the lack of a definite publication policy on the part of the Department of State and to a desire to keep the size of "Foreign Relations" within reasonable limits. The amount of unpublished controversial material is large but, generally speaking, it is not of such a character as to necessitate keeping it secret. A policy of selection may be desirable, but the selecting should be carefully and uniformly done by some person or persons charged with that duty. In November of 1866 Secretary of State Seward wrote Minister Bigelow in Paris requesting him to recommend what dispatches or parts of dispatches should be omitted from "Foreign Relations", and Minister Bigelow replied making recommendations regarding the omission of certain material. Of course the writer of a dispatch should in some cases be permitted to say whether it should be published or not but, generally speaking, the selection of material for publication should be made by the Department of State, subject only to the consent of foreign governments in the case of documents coming from them. Perhaps there is evidence of a desire to make "Foreign Relations" a more adequate and honest record of our diplomatic dealings in the statement of principles approved by Secretary of State Kellogg, March 25, 1925, which presumably

applies to all volumes of "Foreign Relations" published after 1914:

The publication of diplomatic correspondence relating to matters which are still current often presents an insuperable obstacle to effective negotiation, but it is obvious that after the completion of the business in hand, as much of the correspondence as is practicable ought to be made public. This object is attained by the publication of 'Foreign Relations' which presents, in a form economical, compact and easily accessible, the documentary history of the foreign relations of the United States. The editing of 'Foreign Relations' must, therefore, be recognized as an important part of the duties of the Department of State.

The chief of the Division of Publications is charged with the preparation for this purpose, as soon as practicable after the close of each year, of the correspondence relating to all major policies and decisions of the Department in the matter of foreign relations, together with the events which contributed to the formulation of each decision or policy, and the facts incident to the application of it. It is expected that the material thus assembled, aside from the omission of trivial and inconsequential details, will be substantially complete as regards the files of the Department.

The development of the science of international law has become a matter of such weight and general concern that it is recommended that the Chief of the Division of Publications, with the help and counsel of the Solicitor, should give special attention to the publication of all important decisions made by the Department relating to international law, with a view to making available for general study and use the annual contributions of the Department to this important branch of jurisprudence. It is likewise believed that the Department may profitably inaugurate the practice of printing a record of treaty negotiations, and it is, therefore, suggested that such material be added, beginning with 'Foreign Relations', 1918, which is now in process of editing.

When the documents on a given subject have been assembled in the Division of Publications, they should be submitted to the Solicitor, or to the Clerk of the appropriate division which has immediate supervision of the topic. The Solicitor, or the heads of these divisions respectively are charged with the duty of reviewing the material thus assembled and indicating any omissions which appear to be required. Omissions of the following kind are recognized as legitimate and necessary:

- (a) Matters which if published at the time would tend to embarrass negotiations or other business;
- (b) To condense the record and avoid needless details;
- (c) To preserve the confidence reposed in the Department by other governments and by individuals;
- (d) To avoid needless offense to other nationalities or individuals by inciting invidious comments not relevant or essential to the subject; and
- (e) To suppress personal opinions presented in dispatches and not adopted by the Department. To this there is one qualification; namely, that in major decisions it is desirable, where possible, to show the choices presented to the Department when the decision was made.

On the other hand, there must be no alteration of the text, no deletions without indicating the place in the text where the deletion is made, and no omission of facts which were of major importance in reaching a decision. Nothing should be omitted with a view to concealing or glossing over what might be regarded by some as a defeat of policy.

Where a document refers to two or more subjects, provided there are no other objections, it should be printed in its entirety, and not divided for purposes of more exact classification in editing. Great care must be taken to avoid the mutilation of documents. On the other hand, when a foreign government, in giving permission to use a communication, requests the deletion of any part of it, it is usually preferable to publish the document in part rather than to omit it entirely. A similar principle may be applied with reference to documents originating with the American Government.

The Chief of the Division of Publications is expected to initiate through the appropriate channels, the correspondence necessary to secure from a foreign government permission to publish any document received from it and which it is desired to publish as a part of the diplomatic correspondence of the United States. Without such permission, the document in question must not be used. The offices and divisions concerned in this process of editing may be expected to cooperate heartily with a view to the preparation of an adequate and honest record.¹

1. Foreign Relations, 1914, Supplement, iii-iv.

CHAPTER III

WHAT IS AN INTERNATIONAL CONTROVERSY?

Before attempting to analyze the controversies to which the United States was a party during the years under discussion, it is necessary to arrive at some conclusions as to what constitutes a controversy. The Permanent Court of International Justice in the *Mavrommatis* case defined a controversy as a "disagreement on a point of law or fact, a conflict of legal views or of interests between two persons". In order to make this definition applicable in the field of international affairs it is necessary to substitute for the word "persons" the term "states". This substitution is necessary in view of the fact that individuals have no status in international law except as their cases have been taken up by their respective governments.

The definition of the Permanent Court of International Justice as to what constitutes a controversy is accepted with the modification noted above. International controversies then imply the existence of three conditions: first, two or more states must be involved; second, there must be a disagreement or a conflict; third, the issue must involve a point of law or fact, of legal views or

interests.

Let us examine each of these conditions. In the first place, only states can be parties to an international controversy. It does not seem necessary to enter into any general discussion as to what constitutes a state in international relations. For our purposes, a state is any politically organized community with which the United States enters into diplomatic relations either directly through the exchange of accredited representatives or indirectly through the representatives of a third state. Thus a dispute might occur not only between the United States and a state to which an American representative is accredited but also between the United States and a state with which we have no diplomatic dealings either on account of having broken off diplomatic relations or on account of never having established such relations. In the latter event the interests of the United States would be represented by a friendly third state. For example, representations were made to the Mexican Government by the Brazilian minister in Mexico regarding the arrest and imprisonment of an American vice-consul in 1914. At the time the United States Government was not represented in Mexico and the Brazilian minister was temporarily in charge of American interests.

Although only states can be parties to an international controversy, it does not follow that they always act as a

result of national interests being involved. In other words, one party to an international dispute may be acting in behalf of its citizens or subjects whose rights have been violated by another state. As we shall see later, more than one-half of the controversies to which the United States was a party in both of the periods under discussion arose as a result of the violation of the private rights of citizens. Such controversies are international in character, however, because of the acknowledged right of every government to protect its citizens in foreign lands.

In the second place, a controversy implies the existence of a disagreement or conflict. Now a disagreement or a conflict occurs when an issue is raised between two or more states as a result of action by one of them to which the other objects or will not consent. The action taken by the injured state may be either diplomatic or military, but is usually the former. If diplomatic, it may assume a number of forms such as: a demand, a claim, a representation or a protest. If military, it assumes the form of display of force, summary hostile action short of war or war itself.

Let us consider first the forms of diplomatic action which one state may taken against another. An example will help to make the matter clear. Some American citizens traveling in Austria have their passports taken away from

them by Austrian officials, and as a result suffer considerable inconvenience and hardship. The offence against the Americans is regarded by the Department of State as sufficiently serious to warrant diplomatic intervention in their behalf. A number of courses can be pursued, as follows: the American minister in Vienna can be instructed (1) to request the Austrian Government to investigate the complaint and if it is found to be as reported to instruct the officers in question to return the passports, (2) to request an explanation of the acts of the officials, (3) to demand a disavowal of the acts in question and punishment of the guilty officials, (4) to claim a monetary indemnity in behalf of the injured Americans, (5) to use his good offices in behalf of the Americans, (6) to make representations to the Austrian Government regarding the affair, or (7) to protest against such action on the part of Austrian officials toward American citizens. All of these forms of diplomatic action are based upon the fact that the United States is displeased with the reported action of the Austrian officials, but all of them do not constitute a complaint against the acts in question. If the United States merely requests an investigation of the incident or an explanation of the acts of the Austrian officials, it seems clear that it does not regard the affair as serious or as having the sanction of the Austrian Government. The purpose

of taking diplomatic action is simply to insure an official investigation of the incident with a view to making Austrian officers more careful of the rights of Americans in the future. On the other hand, if the United States demands a disavowal of the acts in question and punishment of the guilty officers or enters a claim against the Austrian Government on behalf of the injured Americans, it seems clear from the character of the language employed that it desires to record its displeasure in the form of an official complaint against the acts in question.

If the fifth course of action mentioned above is adopted, and the American minister is instructed to use his good offices in behalf of the American travelers to the end that they may have their passports restored and be subjected to no further inconvenience, there is no evidence of a desire on the part of the United States to enter a definite complaint. The American minister is simply authorized to make use of his official position as minister to Austria to aid some of his fellow countrymen who have gotten into difficulties with Austrian officials. He would be justified in bringing the matter to the attention of the Austrian Government, in requesting the return of the confiscated passports and in expressing the hope that such an incident would not occur again in the future. On the other hand, if the Department of State instructs the American minister to make

representations regarding the affair or to enter a protest against the acts of the Austrian officials, it seems clear that it desires to make the incident the basis of an official complaint. Either course of action would indicate the intention of the United States to take exception to the acts of the Austrian officials and to vindicate the right of Americans to travel freely in Austria without official molestation.

As stated above, it is not always easy in actual practice to distinguish between these various forms of diplomatic action. This is due to the fact that there is little if any real difference between a protest, for example, and formal representations expressed in vigorous language. Nor is there any very real difference between good offices and informal representations, when the latter are couched in moderate terms. The difficulty is sometimes further increased by reason of the fact that the minister's instructions are to make vigorous representations, but in subsequent correspondence the minister or the Department of State refers to the action taken as a protest. The truth of the matter is that good offices, representations and protest are simply different degrees of the same thing. The same is true of a request and a demand. All of them are forms of diplomatic intervention and the distinction between them is based wholly upon the character of the language

employed by the plaintiff state.

It should be pointed out further that these various forms of diplomatic action are not always taken separately. A nation may protest against certain action on the part of another nation and at the same time or later demand that the guilty officials be punished, or it may demand punishment of the officials and claim an indemnity on behalf of its injured citizens. There is no settled mode of procedure which is always followed even in the same type of cases.

Nothing has been said so far regarding the possible character of the replies which might be made by the Austrian Government to the communication of the American minister. Strictly speaking, the character of the reply would determine whether an actual disagreement had arisen between the two countries. If the Austrian Government in its reply to the communication of the American minister denied the correctness of the views therein expressed and declined to make amends for the occurrence, it is very clear that a disagreement has arisen. On the other hand, if the Austrian Government admitted its responsibility in the matter and offered satisfactory reparation it is doubtful, strictly speaking, if there is any dispute between the two governments. However, we may look at the matter in another way. If the original act of the Austrian officers in illegally taking away the passports of the American travelers is regarded as an

official act of the Austrian Government, the disagreement would be established when the American Government took action in the form of a representation, a claim, a demand or a protest. In other words, the character of the action taken by the United States as the plaintiff state would determine whether or not there was a dispute between the two governments. The evidence of the existence of the dispute would be the filing of a representation, a claim, a demand or a protest just as in an ordinary action at law the filing of a complaint or declaration is evidence of the existence of a dispute between plaintiff and defendant. The filing of an answer or a demurrer by the defendant is necessary to get the case before the courts but not essential to the establishment of the fact that there is a dispute. By analogy the same might be said to hold true in international affairs. The latter view is the one which is adopted here. The evidence of the existence of a dispute is the character of the action taken by the plaintiff state without reference to the nature of the reply.

As noted above, the action taken by the injured state may be military instead of diplomatic. If the need for action in a particular situation is urgent, troops may be landed without any preliminary diplomatic correspondence. Thus the United States has landed forces on a number of

occasions in Latin American countries during the progress of a revolution without the formality of a diplomatic protest against the failure of such nation to maintain order or to protect American lives and property. The effect of such summary action is the establishment of a rather one-sided dispute, the settlement of which is dictated by the will of the stronger country.

Several questions regarding the creation of the dispute arise in connection with the use of force by the injured state. When is the disagreement between the two governments established: when forces are landed, when the invaded state complains against the intervention or when the intervening state denies the justice of the complaint? Is there a controversy if the state in whose territory an intervention occurs has invited such action or if it acquiesces in the intervention? The answers to these questions depend in large part upon the point of view which is taken. If, as said above, it is necessary to take into consideration the character of the reply which is made to a diplomatic complaint before deciding if there is a dispute, by analogy it can be said that a dispute is not created as a result of military action until the invaded state has taken some action or even until the intervening state has justified its own conduct. It seems preferable, however, to say that the dispute is created as a result of the interven-

tion without regard to the character of the action taken by the invaded state. Even if the latter acquiesces in the intervention or even if it invites it, there would still seem to be a dispute. One state by intervening in the internal affairs of another state is simply registering a complaint against the failure or inability of that state to maintain domestic order. The dispute arises out of this failure or inability to maintain domestic order and is created when the state whose nationals have been injured registers an official complaint in the form of military action.

Summarizing what has been said above, we find that a disagreement may be established between two states as a result of either diplomatic or military action by one of them. If the action is diplomatic it assumes the form of a representation, a claim, a demand or a protest. If it is military it assumes the form of display of force, summary hostile action short of war or war itself. The forms of action in each class are in practice difficult to distinguish from each other and from other measures which fall short of creating a disagreement on account of the fact that they represent merely different degrees of disapproval on the part of the plaintiff state. They are simply evidences of the existence of a disagreement rather than distinct forms of international procedure.

The third condition necessary to the creation of an international controversy is, according to our definition, the

existence of an issue involving a point of law or fact, of legal views or interests. A discussion of this condition requires an analysis of the issues upon which international controversies are based. What do international law and practice regard as sufficient grounds upon which to base a complaint? In other words, what does the issue in an international controversy involve?

In the first place, the issue in an international controversy may be the alleged illegality or unfriendliness of any action of a government or its authorized agents. Such acts, as pointed out above, may involve either the national rights of a state or the private rights of its citizens. They may be acts either of civil or of military authorities and may be alleged to be simply unfriendly or actually violative of rights guaranteed by municipal or international law or treaty provisions. Even proposed action on the part of a state or its agents may give rise to an international controversy. Thus the United States in 1907 protested against the threatened confiscation by Ecuador of the property of the Guayaquil and Quito Railway Company, an American corporation. Likewise in 1912 Great Britain made representations regarding the provisions of the Panama Canal Tolls Bill before its passage by Congress. After the bill had been passed but before English shipping had felt the effects of any discriminatory tolls, the British Government protested against

the act as violative of the provisions of the Hay-Pauncefote Treaty. The Department of State denied the validity of the British protest on the ground that it was premature, or, in other words, that protest could not be made until a concrete instance had occurred in which tolls had actually been levied upon British vessels from which American vessels were exempted. The position of the United States in this instance can hardly be justified. Although there is doubt as to the right of the British Government to take any action before the bill was passed, it seems clear that it had the right to protest after the bill had become a law but before any act had been committed under it which actually violated British rights. In other words, it may be said to be generally true that a government has the right to complain of any act, admitted, alleged or threatened, on the part of another government or its authorized agents which is claimed to be either unfriendly or illegal.

In the second place, the inadequate enforcement of municipal or international law, resulting in a lack of protection or denial of justice to citizens abroad or to national interests may be the issue in an international controversy. In this class are cases involving the murder of citizens abroad, the destruction of their property, denial of justice by the courts, indignities and injuries to American representatives and agencies abroad, lax enforcement of neutrality

laws, general failure to maintain order, etc. In such cases the complaint of a nation is not against the action of another government or its agents but rather against the failure of such government or its agents to exercise the diligence prescribed by international law for the protection of foreigners or foreign agencies abroad.

In the third place, the issue may involve the question of liability without fault. In such a case the issue is not the act of a government or its authorized agents nor its negligence resulting in a lack of protection or a denial of justice but rather the liability of a government for an act which it could not have prevented. There is no instance of a dispute arising in this way during the periods included in this study but such a dispute might conceivably occur in connection with the violation of a neutralization treaty or a territorial integrity agreement by one of the guarantor nations. In such a case the other signatory nations would be liable but without any fault having been committed by them.

Summarizing what has been said above, we may conclude that an international controversy is a controversy between states, and that the evidence of its existence is diplomatic action by one state in the form of a representation, a claim, a demand or a protest, or military action in

the form of display of force, summary hostile action short of war or war itself. The issue involved may be the act of a state or its authorized agents, the negligence of a state in meeting its international obligations or the liability of a state for an act which it could not have prevented.

CHAPTER IV

CLASSIFICATION OF INTERNATIONAL CONTROVERSIES

In Appendices I and II all the disputes to which the United States was a party between 1866 and 1880 and between 1900 and 1914, about which there was any mention in "Foreign Relations", are recorded chronologically by countries. In the first period, 194 such controversies were found; in the second period, 243. It is the purpose of the present chapter to classify these controversies according to the character of the issues involved and to discuss the relative frequency with which each class of controversy occurs.

Generally speaking, international disputes can be divided into two classes; namely, those which affect primarily the private rights of citizens abroad and those which involve primarily the national existence of the state. The former arise from the well-recognized duty of every government to protect its citizens or subjects wherever they are; the latter from the right of a state to exist as an independent unit and its duty to observe the obligations which international law and custom impose.

The distinction between these two types of controversies is not always easy to make in actual cases. Thus, for

example, in the dispute with Spain in 1873 over the capture of the American steamer Virginus by the Spanish vessel Tornado and the execution of a part of the crew, both private and national rights were involved; private rights, in that American citizens were to be protected against violence; national rights, in that disrespect had been shown to the American flag which the vessel flew. The latter consideration seemed the more important in the diplomatic correspondence which ensued, and so the controversy was classified as one involving the national rights of the United States. Likewise, on most of the occasions when American troops have been landed on foreign shores, such landings were for the purpose of protecting American lives and property, but the dispute was classified as national because the issue involved a national duty of every government; namely, the preservation of domestic order. Thus there is no clear line of distinction to be drawn in practice between controversies affecting the private rights of citizens and those involving the national rights of the state. There are plenty of border-line cases in which private rights merge into national rights and vice versa. The determination of whether a particular dispute belongs in one class or the other in such cases is simply a process of balancing private and national rights to see which is considered more important in the diplomatic correspondence.

Controversies affecting primarily private individuals resolve themselves into two classes: (1) those affecting personal rights and (2) those affecting property rights. Here again we find that in many disputes both types of rights are involved with the result that a classification can be made only by a consideration of the relative importance of each in the diplomatic correspondence.

Controversies affecting personal rights are further subdivided into those involving protection (1) against violence, (2) against abridgment of civil rights and (3) against foreign military service. A few examples will make it clear as to the type of disputes which are included in each category. In the first class are disputes arising out of personal injuries suffered by citizens abroad as a result of ill-treatment by government officials, private individuals, military forces, mobs, etc. In the same class are disputes growing out of the robbery or murder of citizens in foreign countries, the failure or inability of government officials to give proper protection and the denial of justice resulting from the failure to punish the perpetrators of such crimes. Examples of the abridgment of civil rights are found in cases involving the arrest or detention of aliens in violation of the provisions of law or treaty, their exclusion or expulsion from the national territory and discriminations against them in regard to the ownership of property, entry into busi-

ness, imposition of fines and taxes, use of the courts, freedom of travel, etc.

Foreign military service cases always involve the question of the liability of naturalized American citizens to military service when they return to their country of origin. It might be noted in this connection that there are a large number of military service cases reported in the published correspondence but in most of them the intervention of the American government was confined to the use of good offices. Most of these cases arose with Germany and in many of them the American minister acted on his own initiative and without previous instructions from the Department of State, simply reporting to the Department quarterly all cases handled by him during the preceding three months. As noted in an earlier chapter, the use of good offices does not have the effect of initiating a dispute, and so the military service cases involving the use of good offices only were not included in the list of controversies.

Controversies which affect private property rights are also subdivided into those involving protection (1) against violence, (2) against regulation of a discriminatory, illegal or unjust character and (3) against confiscation. In the first group are disputes arising out of property damage suffered by foreigners on account of violence at the hands of private individuals, mobs, revolution-

ists, government agents, military or naval forces, etc. Examples of the second group are found in cases involving the laying of discriminatory or illegal taxes or customs duties on foreign goods, the illegal or unjust detention of foreign property, restrictions on the importation or sale of foreign goods, etc. In the third group are disputes caused by the cancelation of foreign concessions and the seizure of property held under them.

The second general class of international controversies; namely, those which affect primarily the national existence of the state, comprise, first, those cases in which public agencies abroad must be protected. Violation of the privileges of diplomats or consuls or interference with functions which they exercise is a frequent cause of disputes of this character. Cases growing out of restrictions placed on public vessels abroad and indignities to military or naval forces belong also in this category. Included in this class of cases also are disputes resulting from a disrespect of national emblems or national dignity.

Controversies affecting primarily the national existence of the state comprise, in the second place, cases growing out of the violation by a state of its international obligations. Such obligations may be created either by treaty or by general international law. Examples of disputes

growing out of a violation of treaty obligations are the dispute in 1876 regarding the alleged failure of Great Britain to comply with the provisions of the Anglo-American extradition treaty and that with Germany in 1901 regarding the desertion of German seamen in the United States due to alleged violations by the United States of the consular convention between the two countries. Examples of disputes arising from an alleged violation of obligations imposed by international law are found in cases involving neutral duties in time of war or military orders of a belligerent alleged to be in conflict with the principles of international law.

Controversies of a national character include, in the third place, those in which questions of disputed jurisdiction are involved, over land, territorial waters or on the high seas or abroad. Disputes growing out of the location of boundary lines, the exercise of fishing rights in coastal waters and the competence of foreign courts are examples of this class of cases.

Controversies of a national character include, finally, cases in which the issue arises out of the failure of a country to maintain order within its own boundaries or along its borders. On a number of occasions in both of the periods included in this study the United States intervened either diplomatically or by landing forces to protect American

interests which were threatened by the inability of a country to preserve internal order. Likewise, there have been a number of disputes with Canada and Mexico regarding depredations committed along the American borders of those countries.

The classification of the controversies to which the United States was a party between 1866 and 1880 and between 1900 and 1914, which was set forth above, may be briefly summarized as follows:

I. Violation of the rights of nationals.

A. Personal rights

1. Protection against violence
2. Protection against abridgment of civil rights
3. Protection against foreign military service

B. Property rights

1. Protection against violence
2. Protection against regulation of a discriminatory, illegal or unjust character
3. Protection against confiscation

II. Violation of the national or international rights of a state.

A. Protection of public agencies abroad

1. Diplomatic and consular privileges
2. Public ships and military forces
3. National emblems and dignity

B. Violation of international obligations

1. Treaty obligations
2. Obligations of international law

C. Extent of jurisdiction

1. Jurisdiction over land
2. Jurisdiction over territorial waters
3. Jurisdiction on the high seas and abroad

D. Preservation of order

In Tables I and II of the Appendix the disputes to which the United States has been a party during the years under discussion are tabulated according to the above classification. A glance at these tables shows that between 1866 and 1880 there were 107 controversies affecting private rights and 87 affecting national rights. The figures for the period 1900-1914 and 155 and 87, respectively. The general conclusions to be drawn are more or less obvious; first, that the majority of the controversies to which the United States has been a party were caused by a violation of the private rights of citizens abroad, and, second, that the number of controversies involving private rights has tended to increase within recent years. Within the field of controversies affecting private rights the greatest increase was in the number of cases arising out of the confiscation of property rights. However, there were increases in every type of controversy affecting private

rights except in the military service cases. This decrease in the number of military service cases is not particularly significant, however, in view of the fact, as noted above, that there were in reality many more such cases in the later period but the intervention of the American government was confined to the use of good offices in practically all of them. They are not to be considered as controversies, therefore, according to our definition of a controversy in a preceding chapter.

The increase within recent years in the number of disputes affecting private rights might reasonably be expected in view of the greater mobility of the world's population and the rapid growth of international trade and commerce. International contacts in the field of private business have increased, resulting in a larger number of disputes based upon a denial of personal or property rights. The disputes arising out of a confiscation of property rights were for the most part with backward countries of the world whither American capital had gone in search of opportunities for investment. Confiscation of such American owned property followed as a result of the political instability of the governments of such countries, the lack of sufficient finances to operate the government and the apparent absence of a sense of justice and international obligation toward foreigners and their property on the part of officials.

Within the field of controversies affecting national rights there was no general increase in the number of cases in the later period. There was, however, a substantial increase in the number of disputes involving the preservation of domestic order. This type of controversy, as we have seen, involves private rights to a large extent, since no nation could have any direct interest in the failure of another nation to maintain domestic order unless the rights of its own nationals were being threatened or destroyed. The increase in the number of disputes growing out of the failure of a country to maintain order may therefore be explained in the same way as the increase in the number of disputes involving private rights. Failure to maintain order is a characteristic of backward countries, and the influx of American capital into such countries in more recent years has made their unstable political condition a matter of concern to the American government. An increase in the number of controversies caused by the failure to maintain domestic order would naturally follow.

There is perhaps no satisfactory explanation of the fact that there was no general increase in later years in the number of controversies involving the national rights of the state. Perhaps it was due to the development which has been taking place in the field of international relations.

and to a wider recognition of the principles of international law at least so far as they apply to the public relationships of the state. Be that as it may, the significant fact is simply that the United States has been a party to more disputes involving private rights than national rights and that the former are increasing in number while the latter, except for disputes involving the preservation of order, are decreasing.

Reference to Table III, which is a composite of Tables I and II, reveals the fact that the types of disputes which occur most frequently are those involving the violation of civil rights and the regulation of property rights. The figures in column 5 of Table III are here set down in numerical order to show the relative frequency of the different types of controversies.

Abridgment of civil rights of nationals.	.64	15 per cent
Regulation of property rights of nationals	.64	15
Violation of diplomatic and consular privileges. .	.61	14
Protection of nationals against violence	.52	12
Protection of property of nationals against violence	.49	11
Preservation of order.	.35	8
Protection of property of nationals against confiscation	.26	6

Violation of obligations of international law. . .	20	4 per cent
Jurisdiction over land	12	3
Extraterritorial jurisdiction.	12	3
Jurisdiction over territorial waters	11	2
National emblems and dignity	10	2
Military service cases	7	2
Violation of treaty obligations.	7	2
Protection of public ships	6	1
Total	437	100

The most frequent source of friction between the United States and other nations is, according to the above, discriminatory regulation of foreigners and their property. Thirty per cent of all the disputes to which the United States was a party during both of the periods under discussion arose in this way. However, violence to citizens and their property abroad caused almost as many controversies as regulation; in fact even more if the preservation of order is regarded as involving solely the failure of a government to protect foreigners and their property against violence. Another frequent cause of international friction is the violation of diplomatic and consular privileges, which was responsible for 14 per cent of all the controversies occurring between 1866-1880 and 1900-1914. Confiscation of property caused very few disputes during the first period but was responsible for 22 disputes during

the later period, or over 9 per cent of the total for those years. The remaining classes of controversies were of comparatively infrequent occurrence though not necessarily of slight importance.

An examination of the unpublished correspondence for the selected years, 1866, 1880 and 1905, shows that, on the whole, the above conclusions do not need to be modified. Table IX shows that 215 of the 247 controversies omitted from the published correspondence of these years involved the private rights of nationals abroad. Thus it would appear that there are more disputes involving private rights omitted from "Foreign Relations" than those involving national rights, or in other words that a larger percentage of the controversies to which the United States has been a party were caused by a violation of the private rights of citizens abroad than the published correspondence indicates.

Furthermore, an examination of the unpublished correspondence substantiates our conclusion that the number of controversies involving private rights has tended to increase within recent years. In 1866 there were 45 controversies of a private nature about which there is no published record; in 1880 there were 64 and in 1905 there were 106. On the other hand, the unpublished correspondence reveals only a negligible increase in the number of controversies of a national character within recent years.

The types of private controversies occurring most frequently in the unpublished material are those involving regulation of property rights and abridgment of civil rights. As noted above, these are also the classes of disputes most often found in "Foreign Relations". We may conclude therefore that the most frequent source of friction between nations is interference with the rights of foreigners, and especially abridgment of their civil and property rights.

Summarizing the above, we may say that private rights are more often involved in international controversies than national rights and that regulation of private rights is responsible for more disputes than is violence. Apparently foreigners within a country are still regarded with disfavor, the evidence of such disfavor being the large and increasing number of instances in which foreign governments are called upon to intervene in order to secure protection for the persons and property of their nationals abroad.

CHAPTER V

CONTROVERSIES IN RELATION TO THE COUNTRIES INVOLVED

In Tables IV, V, and VI of the Appendix all the controversies to which the United States was a party between 1866 and 1880 and between 1900 and 1914 are tabulated according to their geographical distribution. The countries of the world are classified as American, European, Far Eastern and Near Eastern and the controversies to which the United States was a party are distributed according to this classification. It is the purpose of the present chapter to discuss the geographical distribution of international controversies particularly in regard to the countries originating the complaint and the character of the issues involved.

Reference to Table VI reveals the fact that the United States has been the plaintiff in far more disputes than it has been the defendant. Three hundred and nineteen cases are recorded in which the United States made the complaint while only one hundred and eight cases occur in which other nations complained against the United

States.¹ Ordinarily it might be assumed that a nation would be defendant in as many cases as it was plaintiff, but the figures just noted show that the United States was defendant in only about one-fourth of the cases recorded. This discrepancy might be explained either in terms of the greater incompleteness of "Foreign Relations" so far as disputes in which the United States was defendant is concerned or by taking into consideration the nature of the controversies themselves and the character of the countries with which they occurred. The extent to which controversial material is omitted from "Foreign Relations" has already been taken up in an earlier chapter. At this point the controversies in which the United States was plaintiff and those in which it was defendant will be discussed in their relation to the countries and issues involved.

As just noted, the United States was plaintiff in approximately 75 per cent of the controversies during both of the periods under discussion. This is the average for all countries in both periods for all classes of disputes. An

1. In some instances it is not possible to ascertain from the published diplomatic record which country is the aggressor. The number of such cases is indicated in the tables in a separate column entitled "Aggressor not named". These cases are of course omitted from consideration in the discussion which follows relating to the country of origin of the various types of disputes. They are, however, included in the discussion of types of disputes, methods of settlement, etc.

examination of the total number of disputes in both periods by countries reveals some interesting variations from this figure. For example, the United States was plaintiff in 97 per cent of the controversies with Near Eastern countries, in 80 per cent of those with American countries, in 76 per cent of those with Far Eastern countries and in 60 per cent of those with European countries. The United States has therefore been the plaintiff much more than the defendant especially when dealing with other than European countries. This is strikingly emphasized by the fact that between 1900 and 1914 the United States was defendant in 35 controversies with European countries and plaintiff in only 28, the only instance in either period that the United States did not make more complaints than it received. Assuming that the controversies recorded in "Foreign Relations" constitute a fair sample of all the disputes occurring during the periods under discussion, we may fairly conclude that there is a definite relationship between the extent to which the United States is plaintiff or defendant and the section of the world with which the dispute occurs.

Table III reveals the further fact that there is a relationship between the extent to which the United States is plaintiff or defendant and the type of the dispute. In controversies affecting private rights the United States was

plaintiff in 78 per cent of the cases; in controversies affecting national rights, in 70 per cent of the cases. The percentages in the various sub-classes show even wider variations, as the following figures show. The United States was plaintiff in all of the military service cases, in 88 per cent of the cases involving confiscation of property, in 86 per cent of the cases involving preservation of order, but in only 73 per cent of the cases involving violence to personal rights and 45 per cent of the cases involving violations of the obligations of international law. Generally speaking, however, we may say that the United States is plaintiff in controversies affecting private rights more often than in controversies affecting national rights, and this is especially true, as noted above, when dealing with other than European countries.

So far no account has been taken of the fact that we are dealing with two periods of American diplomacy separated by a space of two decades. Let us see if the general conclusions stated above are altered by a consideration of the disputes of each period. Tables IV and V show that, on the whole, they are not; that is, that the United States was the plaintiff more often than the defendant in each period and that it was the plaintiff more often in controversies affecting private rights than in those affecting national rights. However, a

comparison of the disputes of each period by countries shows that in the first period the United States was complainant in 74 per cent of the controversies with both American and European countries, while in the later period it entered the complaint in 85 per cent of the American cases but in only 44 per cent of the European cases. It would seem, therefore, that the relationship between the extent to which the United States is plaintiff or defendant and the section of the world with which the disputes occur varies according to the period under consideration. In other words, disputes with Latin-America in which the United States was plaintiff have increased while similar disputes with Europe have decreased.

The Department of State during the periods under discussion was confronted with 437 disputes distributed among 42 nations of the world. Forty-eight per cent of these were with 19 American countries, 32 per cent with 15 European countries, 11 per cent with 4 Far Eastern countries and 9 per cent with 4 Near Eastern countries. In round numbers then the Western Hemisphere gave us as much trouble as the rest of the world, in fact more if the number of countries is taken into consideration. A further examination of the strictly American controversies shows that the great majority of them were with the Caribbean states of Mexico, Haiti, Colombia, Venezuela, Cuba, Santo Domingo, Honduras, Guatemala, Nicaragua and

Panama in the order named. In other words, the tropical American countries furnished most of the controversies arising in this area.

It should be noted in this connection, however, that the number of disputes per country is largest for the Far East, being 14.3 per country, while it is 11. in the case of American countries, 9.7 for European and 8. for Near Eastern. The nations with which the United States had the largest number of controversies in both periods are Mexico (54), Great Britain (44), China (34) and Turkey (26). Although the largest individual trouble-makers among the nations are well distributed over the globe, our best comparison of the geographical distribution of disputes is between American and European countries. The number of Far Eastern and Near Eastern countries is too small to give us a fair comparison with either Europe or America. This is especially true when it is considered that Japan and China furnished 47 of the 57 Far Eastern disputes and Turkey 26 of the 32 Near Eastern disputes.

An examination of the various types of disputes with regard to their comparative recurrence in different regions is instructive. Table III shows that the American countries lead in the following major classes of controversies in the order named: those involving preservation of order, violation of the obligations of international law, protection of

property against confiscation, protection of citizens against violence, protection of diplomatic and consular privileges, protection of property against violence, violation of civil rights, as well as in some of the smaller classes. In the larger classes of disputes, European countries lead only in the number of cases involving regulation of property rights. It would seem, therefore, that most of the major classes of international disputes are large mainly because they are of such frequent occurrence with Latin American countries. In other words, failure to maintain domestic order, for example, would be a minor source of international friction but for the fact that it is a frequent cause of disputes with Latin-American states.

From the above facts we may conclude that there is a direct relationship between the number and character of international controversies and the section of the world with which they occur. The countries of the world may be roughly divided into two classes; namely, advanced and backward. The distinction between them is not always easy to make but, on the whole, backward countries are characterized by (1) an habitual failure to maintain order, (2) a want of surplus capital and (3) a lack of complete political independence. Judged by these standards the European nations are, as a

whole, advanced, while the Latin-American countries with some exceptions are backward. Likewise, the Near and Far East with the exception of Japan can properly be said to be backward.

If a country habitually fails to maintain order, it is obvious that international disputes are more likely to arise over violent action both to the persons and property of aliens, as well as over the most general issue of the preservation of order itself. As noted above, American countries have been the worst offenders in cases of this character. Both Far and Near Eastern countries have also furnished a disproportionate number of controversies of this sort, as shown by the figures of Table III. Likewise, cases involving confiscation of property are more likely to occur in countries characterized by a want of surplus capital than in creditor countries. This statement is also borne out by the figures of Table III. Eighteen of the twenty-six controversies arising out of the confiscation of property rights were with backward areas of the world and in only one of them was the United States defendant.¹

1. Claim by Panama (1908) for indemnity on account of damages to property and expropriation of land by the United States in the construction of the Panama Canal.

Furthermore, a large number of Latin-American countries, especially those in the Caribbean area, are not politically independent. Successive applications of the Monroe Doctrine and of its corollary, the so-called "Caribbean policy", have made them poticially dependent upon the United States in varying degrees. These are the countries, as noted above, that furnished most of the controversies arising in the New World. Our conclusion is therefore that backward countries are more productive of disputes than advanced countries, especially in regard to cases involving either violent action to person or property, failure to preserve domestic order and confiscation of property.

In regard to cases of the above character in which the United States was defendant, we find that most of them arose out of the action of mobs, damages suffered as a result of military operations and violence to persons in other countries. The cases involving failure to preserve order in which the United States was defendant arose either as a result of border raids into neighboring countries or indirectly out of revolutionary troubles elsewhere. In short, there is an essential difference between controversies of this general character in which the United States was complainant and those in which it was respondent, this difference being that in the former a more or less constantly recurring state of

violence existed; in the latter, the violence was temporary, caused by unusual circumstances at home or abroad.

The relative distribution of the remaining classes of controversies is not so easily accounted for. Disputes arising out of interference with the civil or property rights of aliens might conceivably occur more frequently in either advanced or backward countries. Table VI shows, however, that disputes growing out of an abridgment of civil rights occur most frequently with Latin-American countries, while those caused by a regulation of property rights occur most frequently with European countries. The military service cases arose with Germany and Mexico out of the impressment of naturalized American citizens into the armies of those countries.

Violation of diplomatic and consular privileges has been a frequent source of trouble with Latin-American states, as has been the violation of the obligations of international law, the latter especially in the earlier period. That backward countries of the world should furnish most of these classes of disputes is not surprising in view of the political instability of their governments and the failure or refusal of their officials to observe the general principles of international law, particularly as they relate to the privileges of foreign representatives. Finally, jurisdictional questions, especially those relating to land and territorial

waters, arose from the proximity of other countries or their possessions to the territory of the United States.

As noted above, backward countries are more productive of disputes than advanced countries, especially in regard to cases involving either violent action to person and property, failure to maintain domestic order and confiscation of property. These are the types of disputes, particularly the latter two, that have tended to occur with more frequency within recent years. The increase is especially significant in the case of the Caribbean countries in view of the fact that the United States was the plaintiff in practically every one of them. The reason for this increase is not that the backward nations of the Caribbean were more backward from 1900 to 1914 than from 1866 to 1880 but rather that the interests of the United States in this region had increased in the later period. The United States has come to dominate this region both commercially and politically. The result of this policy of dominance is an increase in the number of controversies growing out of the confiscation of American property and the failure to maintain domestic order. There was no such increase in disputes of this character with European, Far Eastern or Near Eastern countries during the later period. Only Caribbean countries have felt the effect of the "Big Stick" policy, the pursuit of which has brought us an increasing number of controversies with

those countries.

Controversies of other types with Latin-American nations showed no material increase during the later period. In fact they actually decreased in some classes, the decrease being most noticeable in controversies affecting national rights other than those involving the preservation of order. Apparently these countries are observing their international obligations with greater care but are becoming more lawless in their treatment of Americans and their property.

Disputes with European and Far Eastern countries affecting national rights also decreased during the later period included in this study. However, there was a large increase in the same type of controversies with Near Eastern countries. The principles of international law applicable to the public relationships of the state have apparently not gained as wide an acceptance by Near Eastern countries as they have by other nations.

The number of controversies with European nations involving private rights showed no increase during the later period of our study. This is not true, however, of Far Eastern and Near Eastern countries. There disputes involving private rights showed a substantial increase, due no doubt to the influx of American capital into those regions within more recent years.

Let us see if the above conclusions are altered by taking into consideration the unpublished correspondence. As noted above, the United States was the defendant in only about one-fourth of the controversies mentioned in "Foreign Relations", but Table IX shows that it received the complaint in approximately one-half of the controversies not recorded in "Foreign Relations" for the years 1866, 1880 and 1905. Thus we are brought to the conclusion that the United States has been the defendant in a larger percentage of controversies than the published correspondence indicates. To put it in another way, the percentage of cases in which the United States entered the complaint is lower, but still more than 50 per cent, if account is taken of the unpublished correspondence. As a matter of fact, the only year in which the United States received more complaints than it entered was 1866, and the reason for this was the large number of claims growing out of injury to property during the Civil War.

A study of the unpublished correspondence would seem to show further that a relatively higher percentage of our international controversies have been with European countries than the published correspondence indicates. However, account must be taken of the fact that in 1866 there were many claims against the United States on the part of European nations growing out of injuries to property during

the Civil War. The unpublished correspondence for 1880 and 1905 showed about the same number of disputes with European and American countries, a large percentage of which were caused by an abridgment of the civil and property rights of aliens. These are types of disputes which, as we have seen, might conceivably occur more frequently with either advanced or backward countries, so that our general conclusion that backward countries are more productive of international disputes than advanced countries, especially in regard to cases involving either violent action to person or property, failure to preserve domestic order and confiscation of property, is not affected by taking into consideration the unpublished correspondence.

Finally, we may say by way of summary that the controversies which we have discussed in the preceding pages are distributed among the nations of the world on a basis of great inequality. They vary in the number per country in different geographical areas, in the relative number of cases in which the United States was plaintiff or defendant, in the character of the controversies most frequently occurring with different sections of the world, and, finally and most significantly, according to the character of the countries themselves, judged by the criteria of habitual maintenance of order, presence of surplus capital and freedom from external political control.

CHAPTER VI

THE PROCEDURE OF SETTLEMENT

As we have seen in a previous chapter, international law does not prescribe any definite methods by which one nation can proceed against another that is alleged to have violated its international obligations. Theoretically the plaintiff state can take any action that it chooses to redress any wrong, real or imaginary, which it believes to have been committed against it by another member of the family of nations. Actually, however, international disputes are initiated by one state taking diplomatic action against another in the form of (1) a representation, (2) a claim, (3) a demand or (4) a protest; or military action in the form of (1) display of force, (2) summary hostile action short of war or (3) war itself. It is the purpose of the present chapter to consider the use of these various forms of initial procedure in controversies to which the United States has been a party and to discuss the general methods by which these controversies were settled.

As noted elsewhere, it is not always easy in actual practice to distinguish these various forms of procedure from each other or from other forms which fall short of establishing a disagreement. This is especially true of the forms of diplomatic action where the language employed is

in many instances such as to leave the reader in doubt as to whether there is actually any disagreement between the countries. The following examples copied from "Foreign Relations" will illustrate the nature of the language used in fairly typical cases. On May 25, 1903, the American minister to Brazil wrote the Brazilian Foreign Office:

....Our consular officers have called my attention to the use of this ensign (a flag resembling the American flag which was used by a Brazilian line of vessels), and I believe you will agree with me that confusion may arise from the similarity of the two flags, and that Brazilian port officials as well as our own consular officers might well mistake a Brazilian ship for an American or an American for a Brazilian.I venture to call this to your attention for such action by the proper officials as may seem to you and them proper.¹

On January 18, 1907, the American minister to Portugal wrote the Portuguese Foreign Office:

Herewith I have the honor to transmit a brief statement gathered from the report of the American consul at Funchal, Madeira, concerning the arrest and detention of an American citizen named Francisco F. Freitas, and I earnestly solicit your excellency's kind attention in this matter and such treatment for this citizen of my country as he is entitled to.²

The above instances were not classed as controversies because of the fact that there was no complaint made. The American ministers simply called the attention of the Brazilian and Portuguese Foreign Offices, respectively, to matters which were of concern to the United States and requested that certain action be taken.

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1. Foreign Relations, 1904, p. 102.
 2. Ibid., 1907, Vol. II, p. 959.

The following examples were, however, classified as controversies. During the progress of the Russo-Japanese War the American minister to Russia wrote the Russian Foreign Office, as follows:

....I have received instructions from the Department of State directing me to call the attention of the Russian Government to the confiscation or detention by the Russian squadron of mail matter from the United States on board the British steamship Calchas, seized off the Japan coast....¹

He further stated that by recent international practice neutral mails were exempt from search or seizure during time of war and expressed the confidence that the Russian Government would not fail to recognize this usage.

On August 22, 1904, the same minister wrote the Russian Foreign Office with regard to the discriminatory treatment to which Jews in Russia were subjected:

Under instructions from my Government...I have the honor to bring before you for consideration at this time a subject which has been the occasion from time to time of friendly but sincerely earnest representations to the Russian Government on the part of that of the United States....

A review of the entire Jewish question follows with reasons why the Russian Government should be more liberal in its treatment of the members of this race.

These instances were classified as disputes because the nature of the language employed was such as to indicate a

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1. Foreign Relations, 1904, pp. 773-74.
 2. Ibid., 1904, pp. 791-93.

desire on the part of the United States to enter a definite complaint. The form of initial action in such cases was of course a representation. Thus it becomes evident from the above illustrations just how little difference there really is between a request or the use of good offices on the one hand and a representation on the other.

On the other hand, it is easier to distinguish a claim, a protest or a demand. A claim is usually for money compensation, though it may be for land, jurisdiction over which is in dispute. A protest is the original form of action where the term itself is used in the communication of the plaintiff state. Thus the American minister to China wrote the Chinese Foreign Office on January 27, 1905:

....I have this day received telegraphic instructions from my government ordering me to protest with energy against the forfeiture of the concession granted to the American China Development Company.... The American Government cannot tolerate such an act of spoliation as the forfeiture of this concession would be.¹

There could be no doubt but that the initial action here was a protest. Nor could there be any doubt but that a demand was the form of action in the controversy with Spain over the Virginus affair of 1873. In this case the American minister wrote the Spanish Minister of Foreign Affairs:

The undersigned has now, in the name of the President, to demand the restoration of the Virginus, and the release

1. Foreign Relations, 1905, p. 131.

and delivery to the United States of the persons captured in her who may yet survive; and that the flag of the United States be at the same time saluted in the port of Santiago de Cuba; and also that the Spanish Government manifest, by signal punishments to be inflicted on them, its sense of the misconduct of those of its servants who were concerned in the capture of said vessel and in the execution of the passengers and crew thereof.¹

The form of initial action in a majority of the controversies which we have considered was diplomatic representations. This was the form of procedure used in 258 of the 437 disputes recorded in Appendices I and II following. Furthermore, representations were used in a majority of the instances in every class of controversies, both private and national, with the exception of those arising out of compulsory military service abroad, violence to property, confiscation of property and failure to preserve domestic order. The military service cases need not be considered further in this connection since there are relatively few of them and they represent only a small percentage of the total number of such cases in which diplomatic action was taken by the United States but of such a character as not to create a dispute. In cases growing out of violence to and confiscation of property the predominant form of diplomatic action was a claim. This might reasonably be expected since injury to or loss of property can readily be measured in terms of a monetary indemnity. In cases growing

1. Foreign Relations, 1874-75, p. 939.

out of violence to and confiscation of property the predominant form of diplomatic action was a claim. This might reasonably be expected since injury to or loss of property can readily be measured in terms of a monetary indemnity. In cases growing out of the failure of a country to maintain domestic order the initial action was more often military than diplomatic. It took the form of military intervention,¹ that is, forces were landed to help put down the disorder without the formality of prior diplomatic action. Needless to say, the United States was the plaintiff in all such cases, and they were all with backward areas of the world—the Caribbean countries, China, Turkey, etc.

In all the classes of controversies with the exception of those just named, the predominant form of initial action was representations. However, claims were made in a relatively large number of the cases involving violence to persons, regulation of property rights and jurisdiction over land. The first two types may well give rise to claims for damages in certain cases; the latter, to territorial claims. Altogether claims were made in 76 cases during both of the periods under discussion.

1. The number of such cases initiated in this way is indicated in the tables under the caption "Special". All other cases in which it was not possible to determine what was the actual form of original procedure are also tabulated in this column.

A protest was the original form of diplomatic action taken in a total of 55 cases during both periods. These cases are fairly well distributed among all the various classes of controversies, which fact suggests the general though limited use of the protest to express strong disapproval on the part of the plaintiff state.

If a nation is determined to enforce its will in an international controversy, it may demand that the defendant state take certain action to redress the grievance complained of. Table III shows that demands were made in 26 instances during the periods under discussion and that these cases are found almost entirely in disputes involving private rights and the protection of public agencies abroad. In many instances a demand was coupled with a claim; that is, the United States would demand the removal of the officers guilty of an offense, an apology for the acts and an indemnity for the injuries suffered. The form of diplomatic action in such a case was classified as a demand. On the other hand, if a demand was made for money compensation only, the initial procedure was classed as a claim. In other words, a demand was taken as the form of procedure in all cases where the term was used except in those in which money compensation only was sought.

There are 22 instances during both periods of the use of forms of procedure other than those just mentioned.

In most of them, as noted above, the procedure was military, assuming the form of intervention to maintain domestic order. In a few others there were displays of force, as, for example, when the United States sent a war vessel to Tripoli in 1875 to investigate a reported assault on the American consul there without taking any previous diplomatic action. On another occasion, and without prior diplomatic action, the United States severed diplomatic relations with Nicaragua on account of the execution of two American citizens.

On the whole, representations and protest were the most common forms of initial action in all classes of disputes in both periods. Claims were made almost entirely within the field of controversies affecting private rights, especially in those growing out of violence to and confiscation of property. Demands occurred in controversies affecting private rights and the protection of public agencies abroad. Other forms of procedure, mainly military, were used principally in cases involving the preservation of domestic order.

In the later period, that is, between 1900 and 1914, there was a material increase in the number of controversies in which the initial forms of procedure were claims and military action. This is not surprising in view of the fact that these forms of procedure are used mainly in cases involv-

ing, respectively, confiscation of property and preservation of order, types of controversies which have increased most rapidly within recent years with Latin American countries, in practically all of which the United States was plaintiff. There is very clearly a direct relationship here between type of controversy, extent to which the United States is plaintiff, form of initial procedure and section of the world involved. Table VI shows that there is also a relation between the use of the demand as a form of initial procedure and the section of the world involved. Of the 26 controversies in which demands were made, 25 were with backward areas of the world and in 23 of them the United States was plaintiff. The number of demands has, however, not increased within recent years; in fact, the figures of Table III show that they have decreased to some extent. Claims, demands and military action are therefore used more often in certain types of disputes than in others, more frequently by than against the United States and more often in dealing with backward nations than with the nations of Europe. Representations and protests, on the other hand, are of more general use both as regards different classes of disputes and different countries of the world.

Whatever the form of the initial diplomatic action, it is usually taken only on instructions from the Department of State. In other words, if the United States makes the

complaint, it is made by a representative of the American government abroad acting under instructions from his government. However, there are approximately 100 instances, principally in the earlier period, when the American representative acted on his own initiative in making the complaint, relying upon subsequent approval of his actions by the Department of State.¹ These instances are of less frequent occurrence in the later period because of the increased use of the cable. Much less is left to the discretion of American diplomats today than in 1870. Today they can telegraph the facts of a particular incident to the Department of State and receive their instructions within a few hours at most. In 1870 several weeks were required to communicate by mail with Washington, with the result that it was often necessary for the American diplomat to act on his own initiative, report the facts and the action taken to the Department and rely upon its approval of such action. Of course the Department does not always approve unauthorized action, with the result that the diplomat or consul is usually very careful to state to the government to which he is accredited whether he is acting on his own initiative or under instructions.

1. The instances in which the American representative made the complaint without instructions are indicated in the brief accounts of the controversies in Appendices I and II, following.

Not only is the complaint made by the representative of the plaintiff state to the government of the defendant state but negotiations leading to its settlement are carried on for the most part at the capital of the latter. Occasionally discussion of a particular dispute will be transferred to the seat of the government making the complaint, but this is rare, apparently occurring only when the defendant state is not satisfied with the negotiations as conducted up to that time. Thus in the dispute with Colombia in 1867 growing out of the murder of two American citizens in that country, the Colombian Government punished the persons involved in the murder but declined to pay an indemnity, transferring the discussion regarding an indemnity to Washington. In such cases as this the defendant state evidently believes that its interests will be better protected by dealing directly with the complainant state at its own capital than through a representative of the latter who can act officially only after having received instructions from his government. Occasionally also discussions are carried on at both capitals, especially where the dispute is regarded as important and the negotiations are long-drawn-out and involved. Thus the "Alabama Claims" were discussed simultaneously in both London and Washington, as were some of the other disputes with Great Britain during the years immediately following the Civil War. Generally speaking, however, negotiations leading to the

settlement of a dispute are carried on entirely at the capital of the defendant state.

Having noticed the methods by which international controversies are initiated and discussed, let us turn our attention to the methods which are employed in their settlement. In municipal or national affairs the most common agency for settling disputes is the judiciary. Especially is this true in the United States where the doctrine of judicial supremacy is commonly stated and accepted. But the courts are not the only agency for settling disputes between individuals. In our system of the three-fold division of powers the legislative and executive branches of government also decide issues of a controversial character. The legislature reconciles the views of various political parties and lays down the rules to be applied by the courts. To the executive department is given the power to settle disputes through administrative decisions, particularly where the government has plenary power over the question involved, as, for example, the power of the United States over immigration.

In international affairs, however, not the same organization is found that exists in national affairs. Until recent times no serious attempt had been made to create a worldwide league of nations, and even now the obstacles are very great. Consequently the methods for settling international disputes are undeveloped and rudimentary. With no organization

capable of enforcing its will, each state is left more or less to itself in the choice of the methods it will employ to adjust differences which arise with other nations. The situation is rather comparable to that which might be supposed to exist among individuals in the absence of all government. In such a case disputes between persons might conceivably be settled in one of three ways: first, enforcement of the will of the stronger person; second, agreement of the parties between themselves, and third, submission of the question to a disinterested third party. In international affairs controversies between states are actually settled by the application of one or the other of these methods. A state may impose its will upon another by sheer force, even to the extent of going to war; it may reach an amicable settlement through the channels of diplomacy; or it may agree to accept the decision of an arbitration tribunal. Dictation, negotiation, or arbitration—any of these methods may be applied by states in the settlement of controversies to which they are parties. Various modifications and adaptations may be made, but the methods available for use remain substantially the same.

As might be expected, the predominant method of settlement during both periods was diplomatic negotiation. This method of procedure was pursued in 87 per cent of the

cases, while impartial authority was used in only 8 per cent and dictation in 5 per cent. Of course these methods vary within themselves. Settlement by negotiation includes settlement by diplomacy, by conference, by mediation, by commissions of conciliation and by commissions of inquiry. Each of these methods was used to some extent during the periods under discussion. The majority of the controversies, however, did not pass beyond the stage of diplomacy; they were discussed between the foreign offices of the countries involved usually through the medium of the representative of the country making the complaint. In most of these instances the dispute was closed by the acceptance on the part of one government of the contention of the other, though in several cases a compromise was effected, as, for example, in the dispute with Turkey over the refusal of the Porte to recognize officially American educational, charitable and religious institutions on the same basis as those of other countries. Conferences as a means of diplomatic settlement were not used during either period except in connection with other means of settlement. For example, an international conference fixed the indemnity which China had to pay as a result of the Boxer Rebellion. Also following the Newfoundland fisheries arbitration in 1910, a conference led to the acceptance of the award and the embodiment in treaty form of permanent provisions regarding the rights of American fisher-

men in Canadian territorial waters.

Mediation was adopted on a number of occasions by the United States in settling controversies between other countries, but only once was an attempt at mediation made by third states in disputes to which the United States was a party. The good offices of Argentina, Brazil and Chile were accepted by the United States and Mexico to adjust the differences arising out of the Tampico incident and the consequent occupation of Vera Cruz by American forces, but the efforts to arrive at a settlement in this manner came to no result. Settlement by a council of conciliation was the method pursued in the controversies with Venezuela following the severance of diplomatic relations in 1908. In the dispute with Germany over the export duties levied on potash salts by that country, the Department of State sent its commercial adviser to Germany to inquire into the purpose of the passage of the law, hoping thereby to effect a settlement by the use of a commission of inquiry.

These various forms of procedure are, as said above, a part of the common method of negotiation. It is not possible to assign any general reason for the application of one or the other of these specific forms. The most of them occurred infrequently, and the procedure was more or less adapted to the details of each particular case. Generalizations in such cases become more efforts to justify the use

of the method applied than valid distinctions existing between different types of disputes.

In settlement by means of impartial authority, at least three different methods of procedure are found; namely, technical commissions, arbitration and judicial settlement, to all of which the term "arbitration" is usually applied. The former was used in 1872 to locate the boundary line between the United States and Canada from the Lake of the Woods to the Rocky Mountains and again in 1905 to locate the boundary line between Canada and Alaska. Arbitration in its narrower sense is of two kinds: (1) by an individual and (2) by a board composed usually of two members and an umpire. The dispute regarding the San Juan water boundary was arbitrated by the Emperor of Germany; the claim of Alsop and Company against Chile, by the King of England. The procedure in the Chamizal case with Mexico was arbitrated by a board of three members, this method being also employed in the Newfoundland fisheries controversy with Great Britain, in the Orionoco Steamship Company case with Venezuela and in the preferential claims dispute with Great Britain, Germany and Italy. In the Alabama claims controversy with Great Britain and in the Pious Fund claims against Mexico the arbitration board consisted of five members. Judicial settlement was not and could not have been resorted to during either of the periods under discussion because of

the fact that no international tribunal existed with the proper jurisdiction.

In the settlement of controversies by dictation, either war, intervention or reprisals may be resorted to. During the years under consideration the United States did not go to war to settle any of its disputes, and only twice did it resort to the use of reprisals. In 1871 American forces inflicted heavy losses on the Koreans on account of an attack by the latter on a party of Americans, and in 1914 the Mexican port of Vera Cruz was occupied as a retaliatory measure for the insulting treatment of American sailors at Tampico. On the other hand, the United States intervened in the internal affairs of other countries on at least nineteen occasions. This intervention was of both a military and a peaceful character. As an example of the former, American forces were landed at various times, especially during the later period, in Cuba, Haiti, Santo Domingo, Nicaragua and China. Peaceful intervention, consisting of supervision of elections, occurred twice in Santo Domingo and was proposed for Mexico.

Besides the methods of official procedure, other cases noted in Appendices I and II were settled by private agreement. In controversies arising from the violation of personal and property rights, the Department of State on

several occasions suspended diplomatic discussion of the question while private negotiations were in progress. These cases were included among the disputes conducted by negotiation, since it was largely through the activity of the government in behalf of the individual that a private settlement was possible.

Likewise included among the disputes conducted by negotiation were those in which no settlement was recorded but in which negotiation alone had been used in an effort to effect a settlement. Such controversies might be said in many instances to have been settled by obsolescence; that is, by a simple agreement to disagree with the hope that in time both governments would forget the controversy. As we have already seen, there were 61 disputes during both of the periods included within this study in which no settlement was recorded in the published correspondence. Although a settlement was doubtless reached in many of them but not recorded in "Foreign Relations", there are probably just as many which were never brought to a conclusion but which were terminated by both parties forgetting about them. Such controversies might be said to have been settled by obsolescence.

Having examined the comparative scope of the methods of settling international controversies, let us proceed to

a discussion of these methods from the standpoint of the nature of the disagreement and the character of the countries involved. In practically every class of controversies arising during both periods negotiation takes precedence over impartial authority and dictation as a method of procedure. Only in cases involving the preservation of order does dictation loom large as a method of settlement, and only in questions arising out of violence to property, confiscation of property and jurisdiction over land does impartial authority most frequently occur as a form of procedure. The question of why a certain type of dispute was handled in the way it was naturally arises, and it is to this question that we now turn our attention.

The most objective explanation of the various forms of procedure adopted may be sought in the character of the controversies themselves, classified according to the outline followed in this study. Of the controversies affecting private rights, 89 per cent were conducted by negotiation, 11 per cent by arbitration and none by dictation; of those affecting national rights, 83 per cent were conducted by negotiation, 5 per cent by arbitration and 12 per cent by dictation. In other words, negotiation and arbitration appear in a relatively larger number of cases in which private rights are involved, while dictation appears more often in

controversies affecting national rights. The simplest reason for this variation is found in the nature of the two kinds of disputes. The first type affects individuals primarily, while the second affects the state itself. The government is likely to be more lenient in cases in which it is affected indirectly than in those in which the effect is direct, hence negotiation and arbitration were used more often in the former and dictation more often in the latter.

There are, however, some important exceptions to this distinction in the method of procedure as applied to the two general kinds of disputes. For example, in questions of land jurisdiction, which affect national interests, arbitration was used in 33 per cent of the cases. This might be partially explained by the fact that arbitration has commonly been adopted by nations in the past in settling this particular kind of dispute. Cases of this character likewise lend themselves more readily to arbitration, since they involve primarily the determination of disputed facts.

Another important fact to be noticed is that nineteen of the twenty-one controversies of a public character settled by dictation involved the preservation of order. In only two cases, involving respectively protection of diplomats and of public vessels abroad, was dictation used as a method of procedure. This concentration of dictation as a form of procedure in controversies arising from a

failure to preserve order may be explained by the fact that the preservation of order is a fundamental function of all governments. If a government fails in this particular, foreign countries would seem to be more justified in the use of stringent methods than in other cases where the governmental function called into question is not so fundamental. Of course the fact that the disorder always occurred in weak backward countries where dictation would not lead to a serious war is also important in explaining the use of this form of procedure. A fairly accurate distinction may also be made between controversies involving the preservation of order which were settled by negotiation and those which were settled by dictation. The former involved largely situations which were likely to lead to internal disturbances; the latter involved situations in which internal disturbances had already occurred. In other words, negotiation was used where there was a likelihood that order would not be maintained if a certain policy was carried out; dictation, where there had been an actual failure to maintain order.

Many of the cases involving diplomatic and consular privileges also arose over an actual failure to preserve order, as did the cases involving violence to the persons and property of aliens. But these controversies were settled in most instances by negotiation, dictation being

used in only one case. Here there is an apparent inconsistency, which can be explained only in terms of the relative amount of disorder prevailing in the two types of cases. As said elsewhere, disputes involving the failure to preserve order are of a more general character, arising out of conditions which threaten the security of groups of persons, while those involving protection of person and property and of diplomatic and consular privileges are more often specific cases in which the outbreak of violence was directed at a particular object or a particular individual. This explanation of the existing differences, it is admitted, may not always hold true, but it seems to be sufficiently general to warrant a valid distinction on these grounds.

Table III shows that 38 per cent of the cases involving confiscation of property and 31 per cent of those growing out of violence to property were submitted to arbitration, while only a relatively small percentage of other controversies of a private character were settled in this manner. It will be recalled in this connection that these are the types of cases in which claims were most often made. If, as said above, injury to and loss of property can readily be measured in terms of a monetary indemnity, it would seem to follow that arbitration is the logical method for determining the amount of the indemnity. In other words, it is

quite reasonable that these types of cases should give rise to claims which in turn should be adjudicated by an arbitration tribunal.

A comparison of the two periods under discussion shows that negotiation as a form of procedure was used in relatively fewer cases during the later period than in the former. On the other hand, arbitration and dictation were used more often. The increase in arbitration cases came for the most part in connection with controversies growing out of the confiscation of property; the increase in dictation cases, from controversies involving the preservation of domestic order. Outside of these two types of disputes the methods of settlement in the two periods varied but little.

On the whole, an explanation of the methods of procedure in terms of the classification which we have adopted is rather unsatisfactory. There is no well-defined line of demarkation between the controversies conducted by negotiation, those conducted by arbitration and those conducted by dictation. We shall have to look elsewhere for more valid distinctions which are not subject to such important exceptions.

Is there any relation between the methods of procedure and the nature of the questions involved in the various controversies, classified according to their legal, political

or domestic character? Here we are confronted with the problem of what constitute legal, political and domestic questions, a problem which admits of some difference of opinion. More recently than either of the periods under discussion an attempt has been made to define these types of questions with greater precision, and so it is to these later sources that we will look for our definitions.

The following are by the Statute of the Permanent Court of International Justice declared to be legal questions:¹

- (a) the interpretation of a treaty
- (b) any question of international law
- (c) the existence of any fact which, if established, would constitute a breach of an international obligation
- (d) the nature or extent of the reparation to be made for the breach of an international obligation

Disputes involving these question are also declared by the Covenant of the League of Nations to be suitable for submission to arbitration.² Hence, we may conclude that international controversies of a legal character are those in which one or more of these issues are involved.

This definition of what constitutes a legal question is to some extent modified by the willingness of a state to

1. Article 36, paragraph 2.
2. Article 13, paragraph 2.

submit to the jurisdiction of an arbitral board. In the absence of definite treaty stipulations, a state may at one time claim a certain type of dispute to be legal and at another time claim a similar type to be political or domestic. In other words, there is more or less of a conflict between the theory and the practice in the matter of what constitutes a legal question, so that the only real test that can be applied is in fact the willingness of a state to submit to the jurisdiction of an arbitral board. For example, the controversy with Colombia over the separation of Panama from that country was claimed by Colombia to involve legal questions which should be settled by arbitration, and by the United States to involve political questions which it would not consent to have brought before an arbitral board. In one sense the dispute could be said to have been legal, since it involved the interpretation of certain provisions of the treaty of 1846 between the two countries, while in another sense it was political because the United States refused to agree to arbitration.

The willingness of a state to submit a controversy to arbitration is in a way limited by the types of questions which have in the past been settled by arbitration. For example, boundary disputes have commonly been settled by some form of impartial authority, and so it is less likely that a country will refuse to submit this type of question to

arbitration than some other. This may help to account for the fact that during both periods six jurisdictional questions were arbitrated, four of which involved the location of land boundaries.

Political questions are generally defined by arbitration treaties to be those which affect "the vital interests, the independence, or the honor of the two contracting states, or concern the interests of third parties."¹ Disputes in which issues of this kind are involved are usually excepted from the obligation to submit all controversies to arbitration.

As regards domestic questions, the Permanent Court of International Justice has said:

The question whether a certain matter is or is not solely within the jurisdiction of a state is an essentially relative question; it depends upon the development of international relations.... It may well happen that, in a matter which, like that of nationality, is not, in principle, regulated by international law, the right of a state to use its discretion is nevertheless restricted by obligations which it may have undertaken towards other states. In such a case, jurisdiction which, in principle, belongs solely to the state, is limited by rules of international law.²

1. See, for example, the arbitration treaty between the United States and Great Britain, Malloy, Treaties, I, p. 814.

2. Advisory opinion upon the dispute between France and Great Britain as to the nationality decrees issued in Tunis and Morocco and their application to British subjects. Publications of the Permanent Court of International Justice, Series B, No. 4, p. 24.

Domestic questions are, then, those which are solely within the jurisdiction of a single state and which are not regulated by international law or treaties.

An examination of the thirty-seven controversies submitted to arbitration during both periods shows that all of them involved legal questions, as defined in the Statute of the Permanent Court of International Justice. Most of them were submitted to arbitration in order to determine "the nature or extent of the reparation to be made for the breach of an international obligation". It is not true, however, that every dispute of a legal character was submitted to arbitration during these years. For example, the controversy with Germany regarding the applicability of the Bancroft naturalization treaties to Alsace-Lorraine, with Colombia over the separation of Panama from that country and with Japan over the California Alien Land Laws, all involved the interpretation of treaty provisions, but none of them passed beyond the stage of diplomacy. In numerous cases involving the protection of citizens against violence, the amount of reparation was fixed without submission to an arbitral board. In short, an examination of the various disputes involving legal questions shows that many more of them were settled by negotiation than were submitted to arbitration.

Similarly, controversies of a political character were settled in various ways. For example, the dispute with

France regarding the Maximillian affair in Mexico was political in character, and the method of procedure was negotiation. The controversy with Mexico over the Tampico incident was also political, and the method of procedure was dictation.

It is doubtful, strictly speaking, if there were any disputes during the periods included within this study which could be classed as domestic. The controversies arising from the failure to preserve order were in a sense domestic in that the preservation of order, in theory at least, is a matter of wholly internal concern. However, if the personal or property rights of aliens are threatened or destroyed, the failure to preserve order is no longer solely a domestic question but an international one. Perhaps the nearest approach that we have to domestic questions being involved in international controversies is in the disputes with Cuba in 1912-13 regarding the granting by the Cuban Government of concessions to develop the Zapata Swamp region and to construct a bridge over Havana harbor. Apparently the development of a swamp area and the construction of a bridge are matters solely within the domestic jurisdiction of a state, and they would be but for the fact that the United States exercises a sort of protectorate influence over Cuba and has the right to intervene in Cuban affairs. Under these conditions such questions assume an international

character at least so far as relations with the protector nation are concerned.

An explanation of the methods of procedure in terms of the nature of the questions involved, classified according to their legal, political or domestic character, is therefore not satisfactory. By no means all the legal questions were submitted to arbitration nor were all the political disputes settled by negotiation. Since the question as to whether a certain matter is or is not domestic in character is essentially relative, it is rather futile to attempt any explanation of the method of settling controversies of this nature except to say that no country would agree to arbitrate a dispute which it claimed to be domestic.

We turn now to the relationship between the method of settlement and the character of the parties involved. We have already divided the countries of the world into two classes; namely, advanced and backward, and placed Europe in the former class and Latin America in the latter. We have also pointed out that the number of controversies to which the United States was a party varied substantially in different areas. Table VI shows that there is also a wide variation in the methods of settlement in the different areas. Eighty-three per cent of the total number of disputes with

American countries were settled by negotiation, while ninety per cent of the disputes with Europe were settled in this manner. Again, seven per cent of the American disputes were settled by dictation, but there is not a single case in which dictation was used with a European country. Arbitration occurs as a form of procedure in practically the same percentage of cases in both areas.

If a distinction is made between controversies affecting private interests and those affecting public interests, other differences appear. For example, in American private disputes negotiation was the form of procedure in 84 per cent of the cases, arbitration in 16 per cent and dictation in 0 per cent; in American public disputes, the percentages are 82, 2, and 16, respectively. Contrast these figures with the figures regarding controversies of European origin. In disputes of a private character, negotiation was used in 91 per cent of the cases, arbitration in 9 per cent; in those of a public character, negotiation was used in 89 per cent of the cases and arbitration in 11 per cent, dictation not being used in a single instance.

A comparison of the two periods under discussion reveals the fact that not only were there more arbitration and dictation cases in the later period, as noted above, but that a larger percentage of them were with American countries over confiscation of property and failure to preserve order.

Negotiation was therefore used less frequently in American disputes than in European and less often in the later period than in the earlier, especially when dealing with American countries. Thus we are brought to the conclusion that the form of procedure for settling international controversies varies as between European and American countries and that this variation is more marked in later years, especially when the character of the controversies is taken into consideration.

These differences may be explained in several ways. In the first place, we have already seen that the method of procedure in disputes of a public character is likely to be more severe than in those of a private nature. When the character of the countries is taken into consideration, another factor is introduced which accentuates rather than diminishes these differences in proportion as the countries considered need surplus capital, fail to preserve order and lack political independence. In other words, we may explain the differences in the form of procedure in terms of the civilization or lack of civilization as between the two areas. Latin America, being more backward than Europe, gives the United States more trouble, and the United States in turn is disposed to be more harsh in the terms which it exacts from those countries. Furthermore, the controversies with American states were of a more serious aspect than those

with Europe, and consequently the form of procedure was less gentlemanly. In other words, the differences between the form of procedure with backward and advanced countries may be accounted for by the fact that controversies with the former occur more frequently and are of a more serious aspect than in the case of the latter.

Another method of explaining these differences would be in terms of the relative strength of the countries in each area. The United States, being more powerful than the other nations of the Western Hemisphere, is disposed to be less tolerant with them than with the nations of Europe. Again, we may say that American economic interests, especially within recent years, are more extensive in the Caribbean countries than in Europe, and that the United States is not disposed to see these interests jeopardized because of a lack of protection or a disposition to confiscate. The practice of "dollar diplomacy" is then one way by which we can explain the fact that controversies of American origin were settled by more stringent methods.

From another point of view, we may explain the differences in the procedure applied to European and American controversies in terms of political interests. The American policy of domination in the Caribbean region, where most of the disputes occurred, is to some extent at least not in

harmony with the policy of settling disputes by negotiation. Especially is this true where the countries involved are backward, and where negotiation is a slow and unsatisfactory process. Other forms of procedure are more compatible with the peculiar interests of the United States in this region and with the backward condition of the countries involved.

Finally, we may follow a line of reasoning which is based upon more subjective distinctions than any of the preceding arguments, that is, we may classify international controversies as either important or unimportant, and seek an explanation of the varying methods or procedure in terms of this relative importance or unimportance. The immediate difficulty here is in setting up a definite standard whereby this distinction can be applied. In general, however, we may say that a controversy is important or unimportant according to the magnitude of the interests affected or the seriousness of the issue involved. Unimportant questions are best settled in the simplest manner, hence most of our international disputes, being unimportant, are settled by negotiation. However, in order to follow this line of reasoning, a fairly accurate line of demarkation must be drawn between the two kinds of controversies. This we will not attempt to do other than to indicate some of the types of controversies which are likely to be of more serious aspect than others.

As a general rule, disputes arising from the violation of the national rights of a state are more important than those arising from the violation of the rights of individuals. The former affect the state as a whole, the government being an actual party to the dispute and not an attorney acting for its citizens. Hence, we should expect negotiation to be the method employed in fewer controversies involving public rights than in those involving personal and property rights. This was quite true during both of the periods under discussion. The figures have already been given, but they are repeated here for the sake of clearness. Eighty-three per cent of the former class of disputes were settled by negotiation, while eighty-nine per cent of the latter class were settled in this way. To pass to the other extreme, 12 per cent of the disputes of a public character were settled by dictation, while none of those of a private character were settled in this manner. Therefore we may conclude that the method of settlement is affected by the relative importance of the controversy as judged by its private or public character.

This line of argument, however, fails to take into consideration the fact that many of the most important controversies involved the violation of the rights of citizens and that many of these disputes were handled only through the

diplomatic channels. For example, the dispute with Japan over the passage of the Alien Land Law by California may well be said to be one of the most important controversies of the later period, and the method of procedure was negotiation. Similarly, the Panama Canal tolls controversy with Great Britain, the American claims against Venezuela, resulting in the severing of diplomatic relations, and the kidnapping of Perdicaris by Moroccan bandits might be cited as examples of important disputes of a private character in which the method of procedure was negotiation. Likewise, many important disputes of a public nature were settled by negotiation, notable examples being the controversy with France over the Maximillian affair in Mexico and that with Colombia over the separation of Panama from that country. Arbitration was also the method of procedure in a number of the more important controversies of both a private and a public character. Examples are the Alabama claims against Great Britain, the Alsop and Company claim against Chile, the preferential claims dispute with Great Britain, Germany, and Italy, and the Newfoundland fisheries question with Great Britain. All of these examples go to show that the method of procedure is not always related to the importance of the controversy.

The United States during the period under discussion employed practically every method for settling international controversies to which it was a party except war. These various methods were not, however, applied impartially, especially as between the countries of Latin America and those of Europe. The differences may be explained in terms of the character of the controversies themselves, the character of the countries involved, or the comparative interests of the United States in the two regions. A large percentage of the controversies of both periods were with backward nations over whom the United States exercises a sort of protectorate influence. Under such circumstances it could hardly be expected that the types of controversies and the methods of settlement would be uniform as between these countries and the rest of the world.

CHAPTER VII

THE TIME REQUIRED FOR SETTLEMENT

Having examined the methods by which international controversies are settled, let us turn our attention to the question of the time required for settlement. In Tables VII and VIII of the Appendix all of the controversies recorded during both of the periods under discussion are tabulated according to the length of time required to effect a settlement. For convenience they are grouped into three classes, as follows: those lasting less than three months, between three months and a year and over a year. In many instances "Foreign Relations" does not record the settlement which was reached, and so these cases are of course omitted from the classification. They are, however, tabulated to show their geographical distribution, methods of settlement employed, etc. There are 61 such controversies in both of the periods under discussion, a large percentage of which were in the earlier period and with American countries over an alleged failure to protect private rights. These controversies have been discussed more fully in the chapters dealing with procedure of settlement and the extent to which controversial material is published in "Foreign Relations", and so they are here passed over in order to discuss

the actual time required to settle those controversies about which there is a full published account.¹

Generally speaking, controversies affecting national rights are settled more quickly than those affecting private rights. Of the 220 disputes of the latter class, 89 required more than a year for settlement, while only 34 out of 155 in the former class lasted for over a year. On the whole, disputes involving property rights were of longer duration than those involving personal rights, and this is especially true of disputes growing out of the confiscation of property. Seventeen of the 26 cases of this character required over a year for settlement. It seems altogether reasonable that disputes of a private character should last longer than those of a national character. They are on the whole of more doubtful validity, involving as they do the allegations of individuals against the government under which they temporarily reside and requiring investigation and production of proof before liability will be admitted. On the other hand, in controversies of a national character liability

1. The time required for the settlement of many of these controversies cannot be exactly ascertained in some instances. However, if the settlement was indicated it was thought better to approximate the time than to omit the dispute from this classification. The dates of the first and last notes, as given in connection with the brief accounts of each dispute in Appendices I and II, are the means by which the duration of the disputes is determined.

can be more easily shown because the plaintiff state is acting on its own initiative and in behalf of its own interests rather than as an attorney for one of its injured citizens. Likewise it is reasonable to expect controversies affecting property rights to require a longer time for settlement than those affecting personal rights. The former are more often involved, raising disputed questions of law and fact which require time for discussion and exchange of views. The latter, on the whole, are simpler and easier of adjustment.

Generally speaking, an exception to the above must be made in the case of controversies involving jurisdictional questions. They require a longer time for settlement than any other type of public controversy. On the other hand, disputes relative to diplomatic and consular privileges are more quickly settled than any other type. They concern the rights of the foreign representatives of a country, rights which are fully guaranteed by international law and treaty, any violation of which causes prompt action to be taken by the injured state.

Let us turn to a consideration of the time required for settlement in its relation to the countries involved. On the whole, controversies with American countries which affected private rights were of longer duration than controversies of a similar character with European countries. This is due in part at least to the fact that disputes grow-

ing out of the confiscation of property, which were for the most part with American countries, required a longer period for settlement than any other type of dispute. On the other hand, controversies with American countries which involved national rights were of shorter duration than similar controversies with European states. Apparently the United States as plaintiff in the great majority of such controversies with American countries is not disposed to prolong discussion of questions involving national rights which arise in this area.

It is interesting to note in this connection that controversies in which the United States was defendant were settled more quickly than those in which it was plaintiff. This is especially true of disputes of a private character. In view of the longer duration of such controversies with American countries it would seem to follow that the time required for settlement is longer in disputes of a private character and shorter in disputes of a national character in which backward countries are the defendant. In other words, disputes of a private character are settled less quickly when the defendant state is backward than when it is advanced. On the other hand, disputes of a national character are settled more quickly when the defendant state is backward than when it is advanced. The reason would seem to be that the

United States is less tolerant of backward countries where national rights are involved than she is of advanced countries. At the same time she is disposed not to press backward countries so vigorously for a prompt settlement of private claims. The result is that disputes of a private character remain pending for a longer time with backward countries than with advanced countries. The former type of country is quite often subject to frequent changes of government and on the whole is less disposed to treat complaints arising out of a violation of private rights with the consideration with which they are treated by advanced countries. It seems clear therefore that the time required for settling international controversies depends both upon the character of the controversy and the character of the defendant country.

There is also a relation which exists between the time required for settlement and the method of settlement. This is clearly shown from the figures of Tables VII and VIII. All of the 37 controversies which were settled by arbitration lasted for over a year. Arbitration is therefore a slow method of settlement regardless of whether it is voluntary or compulsory. If voluntary, it is usually not resorted to until other methods of settlement have failed and the two countries can agree upon the composition of the arbitral board and the exact questions to be submitted to it. If compulsory, it is still not automatic even for the

types of disputes defined in the treaty as suitable for submission to arbitration. Diplomacy must first have failed to bring about a settlement in order to invoke the procedure provided for in the treaty. Thus in either case a relatively long period of time has elapsed before the arbitration board has been constituted and the dispute submitted to it. Furthermore, a considerable length of time is required for each government to collect information and prepare its case, and more time elapses while the tribunal is hearing the evidence and preparing the award. Arbitration might therefore be expected to be a slow form of procedure especially since it is not invoked until other methods of settlement have failed.

On the other hand, controversies in which the form of procedure was dictation do not as a rule last so long. Dictation was used, as we have already noted, only in disputes affecting national rights and mainly in cases involving the failure to preserve order. Of the 21 dictation cases recorded in Appendices I and II only 7 required more than a year for settlement. These were for the most part instances when the United States intervened in the internal affairs of other countries and the intervention continued for a considerable length of time. In other instances the intervention was of very brief duration, forces being landed only in an emergency situation and withdrawn as soon as the emergency had passed. It seems clear therefore that dictation

is not a form of procedure which necessarily requires a long time to apply. The duration of the disputes in which dictation was the method of settlement depended largely upon the circumstances of each individual case and the policy of the United States in relation thereto.

The time required for settling disputes by negotiation varies widely. About 75 per cent of such cases are concluded within a year, though many others run for years before they are settled. Thus there is one controversy which had its origin in the first period included in this study which had not been settled at the end of the second period.¹ In the dispute with Colombia over the separation of Panama from that country in 1903 a settlement was not reached until over 18 years had elapsed. These are of course unusual cases and are not at all typical of the general run of controversies settled by negotiation. The most of them are settled within a comparatively brief period of time. This is especially true of controversies affecting national rights, only about 15 per cent of which lasted for over a year. More than twice as many disputes of a private character in which the method of procedure was negotiation required over a year for settlement. It is clear therefore that negotiation

1. Dispute with Germany regarding the applicability of the Bancroft naturalization treaties of 1868 to the provinces of Alsace and Lorraine.

is a speedier form of procedure in disputes involving national rights than in those affecting private rights. The reason, as indicated above, is that the interests involved in the former are usually more vital and the facts more easily ascertained than in cases in which only private individuals are concerned.

By way of conclusion we may say that the time required for the settlement of international controversies varies according to the type of the dispute, the character of the defendant country and the method of settlement. It is longest, generally speaking, in controversies of a private character with backward countries of the world in which arbitration is the method of procedure; and shortest in controversies of a national character with backward countries in which negotiation is the form of procedure. After all, the most significant conclusions to be drawn from a study of international controversies relate to variations in the method and time of settlement as between advanced and backward countries of the world.

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APPENDIX IV
TABULAR SUMMARIES

TABLE I

1866-1880

CONTROVERSIES AFFECTING PRIVATE RIGHTS														
Countries					Original Action					Method				
	American	European	Far Eastern	Near Eastern	TOTAL	U.S.Plaintiff	U.S.Defendant	Aggressor not named	Representations	Protest	Claim	Demand	Special	Negotiation
PERSONAL RIGHTS														
Violence	12	3	2	1	18	14	4	0	13	1	2	2	0	18
Civil Rts.	11	6	6	0	23	20	3	0	17	4	0	2	0	23
Mil. Serv.	3	3	0	0	6	6	0	0	2	3	0	1	0	6
PROPERTY RIGHTS														
Violence	12	11	3	0	26	18	4	4	7	2	14	3	0	19
Regulation	9	17	4	0	30	20	10	0	26	3	1	0	0	30
Confisca.	0	3	1	0	4	3	1	0	2	0	2	0	0	4
Total	47	43	16	1	107	81	22	4	67	13	19	8	0	100
CONTROVERSIES AFFECTING NATIONAL RIGHTS														
PUBLIC AGENCIES														
Diplomatic and Con.														
Privileges	17	5	2	3	27	23	4	0	16	4	0	6	1	27
Pub.Ships	2	1	0	0	3	3	0	0	3	0	0	0	0	3
Nat.Dignity	1	4	0	0	5	5	0	0	3	1	0	1	0	5
JURISDICTION														
Land	6	2	0	0	8	2	4	2	6	0	2	0	0	6
Terr.Waters	1	6	0	0	7	5	1	1	5	1	1	0	0	6
Extraterr.	0	5	1	0	6	5	1	0	4	2	0	0	0	6
INTERNATIONAL OBLIGATIONS														
Treaty	1	1	0	0	2	2	0	0	2	0	0	0	0	2
Inter.Law	12	3	2	0	17	6	11	0	14	2	1	0	0	16
PRESERVATION OF ORDER														
Total	44	32	8	3	87	60	24	3	60	10	4	7	6	78
GR.TOTAL	91	75	24	4	194	141	46	7	127	23	23	15	6	178
Per Cent of Total	47	39	12	2	100	73	24	3	65	12	12	8	3	92

TABLE II

1900-1914

CONTROVERSIES AFFECTING PRIVATE RIGHTS																
Countries					Original Action								Method			
	American	European	Far Eastern	Near Eastern	TOTAL	U.S.Plaintiff	U.S.Defendant	Aggressor not named	Representations	Protest	Claim	Demand	Special	Negotiation	Arbitration	Dictation
PERSONAL RIGHTS																
Violence	19	7	4	4	34	24	10	0	19	1	9	4	1	32	2	0
Civ.Rgts.	17	13	8	4	42	29	13	0	31	7	3	1	0	42	0	0
Mil.Serv.	0	1	0	0	1	1	0	0	1	0	0	0	0	1	0	0
PROPERTY RIGHTS																
Violence	9	6	7	1	23	16	7	0	4	0	19	0	0	15	8	0
Regula.	7	12	8	7	34	29	4	1	19	9	5	1	0	32	2	0
Confisca.	16	5	1	0	22	20	2	0	3	4	15	0	0	12	10	0
Total	68	44	28	16	156	119	36	1	77	21	51	6	1	134	22	0
CONTROVERSIES AFFECTING NATIONAL RIGHTS																
PUBLIC AGENCIES																
Dip.and Con.																
Privileges	15	12	2	5	34	24	10	0	28	3	0	2	1	33	0	1
Pub.Ships	3	0	0	0	3	1	2	0	1	1	0	1	0	2	0	1
Nat.Digni.	3	1	0	1	5	2	3	0	3	1	0	1	0	5	0	0
JURISDICTION																
Land	2	2	0	0	4	0	2	2	1	1	2	0	0	2	2	0
Terr.Waters	2	2	0	0	4	1	3	0	2	2	0	0	0	3	1	0
Extraterr.	0	0	1	5	6	5	1	0	4	2	0	0	0	6	0	0
INT.OBLGS.																
Treaty	1	4	0	0	5	2	3	0	5	0	0	0	0	5	0	0
Inter.Law	2	0	1	0	3	3	0	0	2	0	0	1	0	3	0	0
PRESERVATION OF ORDER																
Total	49	21	5	12	87	59	26	2	54	11	2	5	15	67	4	16
GR.TOTAL	117	65	33	28	243	178	62	3	131	32	53	11	16	201	26	6
PER CENT OF TOTAL																
	48	27	14	11	100	73	26	1	54	13	22	4	7	83	11	6

TABLE III

TOTAL OF TABLES I AND II																
CONTROVERSIES AFFECTING PRIVATE RIGHTS																
	Countries					Original Action					Method					
	American	European	Far Eastern	Near Eastern	TOTAL	U.S.Plaintiff	U.S.Defendant	Aggressor not named	Representations	Protest	Claim	Demand	Special	Negotiation	Arbitration	Dictation
PERSONAL RIGHTS																
Violence	31	10	6	5	52	38	14	0	32	2	11	6	1	50	2	0
Civ.Rts.	28	19	14	4	65	49	16	0	48	11	3	3	0	65	0	0
Mil.Serv.	3	4	0	0	7	7	0	0	3	3	0	1	0	7	0	0
PROPERTY RIGHTS																
Violence	21	17	10	1	49	34	11	4	11	2	33	3	0	34	15	0
Regula.	16	29	12	7	64	49	14	1	45	12	6	1	0	62	2	0
Confisca.	16	8	2	0	26	23	3	0	5	4	17	0	0	16	10	0
Total	115	87	44	17	263	200	58	5	144	34	70	14	1	234	29	0
CONTROVERSIES AFFECTING NATIONAL RIGHTS																
PUBLIC AGENCIES																
Diplomatic and Consular Priv's	32	17	4	8	61	47	14	0	44	7	0	8	2	60	0	1
Pub.Ships	5	1	0	0	6	4	2	0	4	1	0	1	0	5	0	1
Nat.Dig.	4	5	0	1	10	7	3	0	6	2	0	2	0	10	0	0
JURISDICTION																
Land	8	4	0	0	12	2	6	4	7	1	4	0	0	8	4	0
Terr.Waters	3	8	0	0	11	6	4	1	7	3	1	0	0	9	2	0
Extraterr.	0	5	2	5	12	10	2	0	8	4	0	0	0	12	0	0
INT.OBLGS.																
Treaty	2	5	0	0	7	4	3	0	7	0	0	0	0	7	0	0
Inter.Law	14	3	3	0	20	9	11	0	16	2	1	1	0	19	1	0
PRESERVATION OF ORDER																
	25	5	4	1	35	30	5	0	15	1	0	0	19	15	1	19
Total	93	53	13	15	174	119	50	5	114	21	6	12	21	145	8	21
GR.TOTAL	208	140	57	32	437	319	108	10	258	55	76	26	22	379	37	21
PER CENT OF TOTAL																
	48	32	13	7	100	73	25	2	59	13	17	6	5	87	8	5

TABLE IV

1866-1880

CONTROVERSIES AFFECTING PRIVATE RIGHTS

Countries	No. Countries	Total Disputes	No. per Country	Original Action					Original Action					Method						
				U.S. Plaintiff	Representations	Protest	Claim	Demand	Special	U.S. Defendant	Representations	Protest	Claim	Demand	Special	Aggressor	Not named	Negotiation	Arbitration	Dilatation
American	10	47	4.7	39	21	8	4	6	0	9	3	0	2	1	0	0	2	43	4	0
European	9	43	4.8	29	21	3	5	0	0	12	9	1	2	0	0	0	2*	40	3	0
Far Eastern	3	16	5.3	12	10	0	1	1	0	4	2	1	1	0	0	0	0	16	0	0
Near Eastern	1	1	1	1	1	0	0	0	0	0	0	0	1	0	0	0	0	1	0	0
Total	24	107	4.5	81	53	11	107	7	0	22	14	2	5	1	0	4	4	100	7	0

CONTROVERSIES AFFECTING NATIONAL RIGHTS

CONTOVERSIES AFFECTING NATIONAL RIGHTS																			
American	13	44	3.4	27	18	5	0	3	1	17	16	0	0	1	0	0	42	0	2
European	5	32	6.4	23	17	3	1	1	1	6	6	0	0	0	0	3*	28	4	0
Far Eastern	4	8	2.0	7	0	2	0	2	3	1	1	0	0	0	0	0	5	0	3
Near Eastern	2	3	1.5	3	2	0	0	0	1	0	0	0	0	0	0	0	3	0	0
Total	24	87	3.6	60	36	10	1	6	6	24	24	0	0	1	0	3	78	4	5
GRAND TOTAL		194		141	89	21	11	13	6	46	38	2	5	2	0	7	178	11	5

*Classified as a claim and added in Total claims of Table I.

TABLE V

1900-1914

CONTROVERSIES AFFECTING PRIVATE RIGHTS																				
Original Action										Original Action										Method
Countries	No. Countries	Total Disputes	No. per Country	U.S. Plaintiff	Representations	Protest	Claim	Demand	Special	U.S. Defendant	Representations	Protest	Claim	Demand	Special	Aggressor Not Named	Negotiation	Arbitration	Dictation	
American	15	68	4.5	63	24	7	25	6	1	5	2	0	3	0	0	0	0	54	14	0
European	12	44	3.6	21	14	3	4	0	0	22	10	2	10	0	0	0	1*	39	5	0
Far Eastern	3	28	9.3	19	11	4	4	0	0	9	4	3	2	0	0	0	0	26	2	0
Near Eastern	3	16	5.3	16	12	2	2	0	0	0	0	0	0	0	0	0	0	15	1	0
Total	33	156		119	61	16	35	6	1	36	16	5	15	0	0	0	1	134	22	0

CONTROVERSIES AFFECTING NATIONAL RIGHTS																			
American	12	49	4.0	36	23	0	0	1	12	12	5	7	0	0	0	1*	34	2	13
European	8	21	2.8	7	7	0	0	0	0	13	13	0	0	0	0	1*	19	0	2
Far Eastern	1	5	5.0	5	1	1	0	1	2	0	0	0	0	0	0	0	3	0	2
Near Eastern	2	12	6.0	11	4	3	0	3	1	1	1	0	0	0	0	0	11	0	1
Total	23	87	3.8	59	35	4	0	5	15	26	19	7	0	0	0	2	67	4	16
GRAND TOTAL	243	178		178	96	20	35	11	16	62	35	12	15	0	0	3	201	26	16

*Classified as a claim and added in Total claims of Table II.

TABLE VII

1866-1880

CONTROVERSIES AFFECTING PRIVATE RIGHTS																				
Countries									Classification Method											
Total	American	European	Far Eastern	Near Eastern	U.S.Plaintiff	U.S.Defendant	Aggressor Not Named	Violence	Civil Rights	Military Service	Violence	Regulation	Confiscation	Negotiation	Arbitration	Dictation				
Less than																				
3 mos.	23	9	9	5	0	13	10	0	7	4	3	3	6	0	23	0	0			
From 3 to																				
12 mos.	33	12	14	7	0	26	7	0	5	8	0	9	9	2	33	0	0			
More than																				
12 mos.	21	9	12	0	0	14	3	4	1	2	2	9	7	0	14	7	0			
Set.Record.	77	30	35	12	0	53	20	4	13	14	5	21	22	2	70	7	0			
No.Set.Rec.	30	17	8	4	1	28	2	0	5	9	1	5	8	2	30	0	0			
TOTAL	107	47	43	16	1	81	22	4	18	23	6	26	30	4	100	7	0			
CONTROVERSIES AFFECTING NATIONAL RIGHTS																				
Countries									Classification Method											
Total	American	European	Far Eastern	Near Eastern	U.S.Plaintiff	U.S.Defendant	Agg.notNamed	Dip.and Cons.	Pub.Ships	Nat. Dignity	Land Juris.	Terr.Waters	Extraterr.	Treaty Obl.	Inter.Law	Pres.ofOrd.	Negotiation	Arbitration	Dictation	
Less than																				
3 mos.	35	17	13	3	2	22	13	0	14	2	1	1	3	3	0	8	3	34	0	1
From 3 to																				
12 mos.	21	10	6	4	1	14	7	0	7	1	0	3	1	3	2	3	1	20	0	1
More than																				
12 mos.	18	5	12	1	0	12	3	3	2	0	3	2	2	0	0	3	6	12	4	2
Set.Record.	74	32	31	8	3	43	23	3	23	3	4	6	6	6	2	14	0	66	4	4
No.Set.Rec.	13	12	1	0	0	12	1	0	4	0	1	2	1	0	0	3	2	12	0	1
TOTAL	87	44	32	8	3	60	24	3	27	3	5	8	7	6	2	17	12	78	4	5

TABLE VIII

1900-1914.

CONTROVERSIES AFFECTING PRIVATE RIGHTS																	
Countries										Classification				Method			
	Total	American	European	Far Eastern	Near Eastern	U.S.Plaintiff	U.S.Defendant	Aggressor Not Nam.	Violence	Civil Rights	Military Service	Violence	Regulation	Confiscation	Negotiation	Arbitration	Dictation
Less than 3 mos.	36	16	8	9	3	25	11	0	10	17	0	2	7	0	36	0	0
From 3 to 12 mos.	40	11	16	10	3	30	10	0	9	10	0	6	11	4	40	0	0
More than 12 mos.	68	35	18	9	6	51	16	1	13	9	1	15	13	17	46	22	0
Set.Record.	144	62	42	28	12	106	37	1	32	36	1	23	31	21	122	22	0
No Set.Rec.	12	6	2	0	4	12	0	0	2	6	0	0	3	1	12	0	0
TOTAL	156	68	44	28	16	118	37	1	34	42	1	23	34	22	134	22	0

CONTROVERSIES AFFECTING NATIONAL RIGHTS																				
Countries											Classification Method									
Total	American	European	Far East.	Near East.	U.S.Plaintiff	U.S.Defendant	Agg.notNam.	Dip. and Con	Pub.Ships	Nat. Dig.	Land Juris.	Terr.Waters	Extraterr.	Treaty Ob.	Inter.law	Pres. Order	Negotiation	Arbitration	Dictation	
Less than 3 mos.	45	26	12	1	6	29	16	0	23	2	5	1	0	0	3	2	9	37	0	8
From 3 to 12 mos.	20	13	5	1	1	14	6	0	8	1	0	1	2	1	0	1	6	17	0	3
More than 12 mos.	16	9	3	2	2	9	5	2	1	0	0	2	2	2	1	0	8	7	4	5
Set.Record.	81	48	20	4	9	52	27	2	32	3	5	4	4	3	4	3	23	61	4	16
No Set Rec.	6	1	1	1	3	6	0	0	2	0	0	0	0	3	1	0	0	6	0	0
TOTAL	87	49	21	5	12	58	27	2	34	3	5	4	4	6	5	3	23	67	4	16

TABLE IX

UNPUBLISHED CORRESPONDENCE, 1866, 1880 and 1905

CONTROVERSIES AFFECTING PRIVATE RIGHTS												
Countries							Original Action					
Total	American	European	Far Eastern	Near Eastern	U.S. Plaintiff	U.S. Defendant	Representations	Protest	Claim	Demand	Special	
PERSONAL RIGHTS												
Violence. . .	32	17	13	2	0	13	19	29	0	3	0	0
Civil Rgts. . .	51	22	26	3	0	24	27	37	2	11	1	0
Mil. Serv. . .	0	0	0	0	0	0	0	0	0	0	0	0
PROPERTY RIGHTS												
Violence. . .	42	10	25	6	1	17	25	6	0	36	0	0
Regulation. . .	70	19	46	5	0	41	29	47	3	20	0	0
Confiscation. .	20	9	9	1	1	15	5	8	0	12	0	0
TOTAL	215	77	119	17	2	110	105	127	5	82	1	0
CONTROVERSIES AFFECTING NATIONAL RIGHTS												
PUBLIC AGENCIES												
Dip. and Con.												
Privileges . .	9	2	6	0	1	3	6	8	1	0	0	0
Pub. Ships . .	4	3	1	0	0	3	1	4	0	0	0	0
Nat. Dignity .	5	1	4	0	0	3	2	5	0	0	0	0
JURISDICTION												
Land	1	0	1	0	0	0	1	1	0	0	0	0
Terr. Waters. .	4	4	0	0	0	2	2	3	0	1	0	0
Extraterr. . .	4	2	1	0	1	0	4	2	1	1	0	0
INT. OBLIGATIONS												
Treaty	0	0	0	0	0	0	0	0	0	0	0	0
Interna. Law .	3	0	2	0	1	1	2	2	0	1	0	0
Preserv. of Order												
Order	2	0	2	0	0	2	0	2	0	0	0	0
TOTAL	32	12	17	0	3	14	18	27	2	3	0	0
GRAND TOTAL	247	89	136	17	5	124	123	144	7	85	1	0

